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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0117; FV07–989–4 FR]

Raisins Produced From Grapes Grown In California; Revisions to Requirements Regarding Off-Grade Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises requirements regarding off-grade raisins under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule revises the requirement that notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This rule also removes the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action brings the order's administrative rules and regulations in line with current industry practices.

EFFECTIVE DATE: August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Rose.Aguayo@usda.gov* or *Kurt.Kimmel@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This final rule revises requirements regarding off-grade raisins under the order. This rule revises the requirement that notification handlers must provide to the Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA (hereinafter referred to as the inspection service) and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This rule also removes the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action brings the order's administrative rules and regulations in line with current industry practices and was unanimously recommended by the Committee at a meeting on July 11, 2007.

The order provides authority for quality control whereby handlers must have their raisins inspected upon receipt from producers and prior to shipment. Handlers may receive raisins that do not meet minimum standards. Section 989.24(b) specifies that off-grade raisins are raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins (or raisins that have not been processed). Off-grade raisins that cannot be successfully reconditioned to meet the applicable minimum grade standards for processed raisins become other failing raisins.

Section 989.58(e) provides requirements for off-grade raisins. Paragraph (1) of that section specifies that off-grade raisins may be received or acquired by the handler, without further inspection, in eligible non-normal outlets (such as animal feed); be returned unstemmed to the person tendering the raisins (usually the producer); or be received by the handler for reconditioning. Off-grade raisins received by handlers under any one of these three categories may be changed to any of the other categories under such rules and procedures recommended by the Committee and approved by the Secretary of Agriculture (Secretary). Paragraph (2) of that section specifies that off-grade raisins may be transferred from a receiving handler's plant to another plant of his/hers or to that of another handler within the State of California.

Section 989.158(c) specifies rules and procedures for off-grade raisins. Paragraph (2) of that section requires that handlers notify the inspection service in writing prior to making any changes in off-grade raisin categories as described above. Paragraph (3) of that

section requires handlers to notify the inspection service in advance and in writing on a form provided by the Committee, of the time they plan to transfer lots of off-grade raisins for reconditioning. They must also provide the Committee this form. Paragraph (4) of that section specifies that handlers must notify the inspection service in writing prior to reconditioning off-grade raisins. Paragraph (6) of that section requires handlers to notify the inspection service in writing before transferring stemmed raisins to another handler for reconditioning, and to obtain from the receiving handler a statement that he or she will receive such raisins for reconditioning. Copies of the inspection notification and receiving handler statement must be forwarded by the transferring handler to the Committee.

Section 989.73(d) of the order provides authority for the Committee, with approval of the Secretary, to request other information from handlers that may be necessary for the Committee to perform its duties. Section 989.173(d)(2) specifies that handlers must report to the Committee information regarding transfers of off-grade raisins and other failing raisins, including the date of the transfer, the name and address of the receiving handler and location of his or her plant, the name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot, and the varietal type, net weight, and condition of the raisins.

In the early 1990s, the inspection service began computerizing much of the information regarding raisin inspections, including data regarding off-grade raisins. These computerized data are shared with Committee staff. The inspection service generates reports from this database as needed and provides the information to handlers. Handlers now notify the inspection service verbally or by other means of communication, including e-mail, before they change off-grade raisin categories, transfer off-grade raisins for reconditioning, recondition off-grade raisins, or transfer off-grade raisins that have been stemmed to another handler for reconditioning. Thus, it is no longer necessary for handlers to provide such notification in writing, too.

Likewise, it is not necessary for handlers to submit reports to the Committee on transfers of off-grade or other failing raisins. As stated above, the computerized data regarding off-grade raisins generated by the inspection service are shared with Committee staff. Additionally, handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These include the RAC–28, Processor's Report of Acquisition of Off-Grade Raisins; RAC–28A, Processor's Report of Disposition of Off-Grade Raisins and Raisin Residual Material; the RAC–30, Weekly Off-Grade Summary; the RAC–32, Monthly Report of Dispositions of Off-Grade Raisins, Other Failing Raisins and Raisin Residual Material; the RAC–33, Weekly Report of Disposition of Standard Raisins Recovered from Reconditioning of Off-Grade Raisins; and the RAC–51 CO, Inventory of Off-Grade Raisins on Hand (for organically produced raisins). These forms will continue to be used and are currently approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178, Vegetable and Specialty Crops.

Thus, the Committee recommended revising the order's administrative rules and regulations to remove these requirements and reflect current industry practices. Accordingly, this rule would revise paragraphs (2), (3), (4)(i), and (6)(ii) in § 989.158(c) and remove paragraph (d)(2) in § 989.173.

Final Regulatory Flexibility Analysis

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

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

There are approximately 21 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities.

This final rule revises § 989.158(c) regarding the requirement that notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, therefore, allowing them to use other means of communication, including e-mail. Handlers now provide such notification verbally or by other means of communication; written notification is no longer necessary. This rule also revises § 989.173(d) by removing the requirement that handlers must submit reports to the Committee on transfers of off-grade and other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These changes bring the order's administrative rules and regulations in line with current industry practices. Authority for these changes is provided in §§ 989.58(e) and 989.73(d) of the order, respectively.

Regarding the impact of this action on producers and handlers, these changes will not impact producers, and will remove requirements on handlers that are not necessary. It brings the administrative rules and regulations in line with current industry practices.

As an alternative, the Committee considered maintaining the status quo. However, this is not practical since the requirements are no longer necessary. Handlers now notify the inspection service and the Committee verbally or by other means of communication before they perform certain functions on off-grade raisins. Additionally, handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. Thus, the Committee recommended revising the regulations to bring them in line with current industry practices.

This action revises reporting and recordkeeping requirements specified in the order's administrative rules and regulations for all California raisin handlers. These requirements were approved under OMB No. 0581–0178, Vegetable and Specialty Crops. No change to this approval is warranted as a result of this action. This action brings the regulations in line with current industry practices. Data regarding off-grade raisins have been computerized since the early 1990s. It is no longer necessary for handlers to advise the inspection service nor the Committee in writing when they perform certain functions regarding off-grade raisins. Handlers provide such notification verbally or by other means of communication, including e-mail. The time it takes to provide such

information is minimal. Likewise, it is no longer necessary for handlers to submit reports to the Committee regarding transfers of off-grade for reconditioning or other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's July 11, 2007, meeting and the Administrative Issues Subcommittee meeting held earlier that day were widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, both were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 22, 2008 (72 FR 21551). Copies of the rule were mailed or sent via facsimile to all Committee members and raisin handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 22, 2008, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.158 is amended as follows:

■ a. In paragraph (c)(2), the second sentence is revised, and a new sentence is added after it;

■ b. In paragraph (c)(3), the fourth sentence is revised, and a new sentence is added after it;

■ c. In paragraph (c)(4)(i), the first sentence is revised, and a new sentence is added after it; and

■ d. Paragraph (c)(6)(ii) is revised.

The revised and added text reads as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c) * * *

(2) * * * Prior to making such change, the handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin such change. Such notification shall be provided verbally or by other means of communication, including e-mail. * * *

(3) * * * The handler shall notify the inspection service in advance of the time such handler plans to transfer each lot. Such notification shall be provided verbally or by other means of communication, including e-mail. * * *

(4) * * *

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including e-mail. * * *

* * * * *

(6) * * *

(ii) Any packer may arrange for or permit the tenderer to remove the stemmed raisins (described in paragraph (c)(6)(i) of this section), but not the residual, directly to the premises, within California, of another packer for further reconditioning of the raisins at the latter's premises. Such removal and transfer shall be made under the surveillance of the inspection service. The packer shall notify the inspection service as required in paragraph (c)(3) of this section. Such raisins may be received by the other packer without inspection. On and after such receipt of the raisins for further reconditioning, all applicable provisions of this part shall apply with respect to such raisins and the packer so receiving them.

* * * * *

§ 989.173 [Amended]

■ 3. In § 989.173, paragraph (d)(2) is removed and reserved.

Dated: July 16, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–16605 Filed 7–18–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0733; Directorate Identifier 2008–NM–114–AD; Amendment 39–15617; AD 2008–15–05]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 737–300, –400, and –500 series airplanes. This AD requires inspecting to determine if certain carriage spindles are installed, repetitive inspections for corrosion and indications of corrosion on affected carriage spindles, and if necessary, related investigative action and corrective action. This AD also provides optional terminating action. This AD results from a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. We are issuing this AD to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through

the large diameters, on a flap, could adversely affect the airplane's continued safe flight and landing.

DATES: This AD is effective August 5, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 5, 2008.

We must receive comments on this AD by September 19, 2008.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. The affected carriages were overhauled after February 2006. The carriage sub-assembly had been replaced with a new carriage sub-assembly that had a high velocity oxy-fuel (HVOF) thermal coating applied to the spindle. The HVOF thermal coating had flaked off, exposing the base metal and allowing corrosion on the spindle. Boeing is examining parts returned from operators to find the cause of the coating flaking off. Corrosion of the carriage spindle, if not detected and corrected, could result in fracture of the spindle. One fractured carriage spindle on a flap can be compensated for with pilot inputs to the aileron or rudder, which increases pilot workload. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a single flap, could adversely affect the airplane's continued safe flight and landing.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. The service bulletin describes procedures for:

- An inspection or maintenance records check to determine if a suspect carriage spindle with HVOF thermal coating is installed;
- Repetitive detailed inspections for corrosion and for potential indications of corrosion such as flaking metallic particles, disbonded sealant, or cracked paint or primer of the forward and aft ends of the affected carriage spindle (with the option to do a borescope inspection instead on the forward end only);
- Related investigative actions if potential or no indications of corrosion are found; and
- Corrective action if a corroded, cracked, or severed spindle is found.

The related investigative actions involve (1) removing the carriage to do a detailed inspection of the entire surface of the spindle for corrosion if potential indications of corrosion were found or (2) for airplanes on which no corrosion indications were found during the detailed or optional borescope inspection, doing repetitive gap checks for differential movement (with an option to do a non-destructive test (NDT) ultrasonic inspection) for cracking that could indicate a severed spindle. The corrective action involves replacing a corroded, cracked, or severed carriage spindle with a new or serviceable carriage spindle. The service bulletin also provides for an optional terminating action that involves replacing an HVOF-coated carriage spindle with a non-HVOF coated carriage spindle.

The service bulletin specifies a repetitive interval of 90 days for the detailed inspections (including optional borescope inspection) and a repetitive interval of 15 days or 150 flight cycles for the gap checks (including optional NDT ultrasonic inspections).

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the AD and the Service Information.''

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the discrepant HVOF coating, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

FAA's Justification and Determination of the Effective Date

We received a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. The HVOF coating on the affected carriage spindle had flaked off, exposing the base metal. Corrosion occurring on the exposed base metal can quickly lead to cracking and full fracture of the carriage spindle. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a single flap, could adversely affect the airplane's continued safe flight and landing. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the structural integrity of the carriage spindle and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0733; Directorate Identifier 2008–

NM–114–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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–15–05 Boeing: Amendment 39–15617. Docket No. FAA–2008–0733; Directorate Identifier 2008–NM–114–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 5, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. We are issuing this AD to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a single flap, could adversely affect the airplane's continued safe flight and landing.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspection To Determine Affected Carriage Spindle

(f) Within 30 days after the effective date of this AD, inspect the carriage sub-assembly to determine whether an affected carriage spindle with a high velocity oxy-fuel (HVOF) thermal coating is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and/or serial number of the carriage can be conclusively determined from that review. If no affected carriage spindle is installed, no further action is required by this paragraph.

Repetitive Inspections, Related Investigative Actions, and Corrective Action

(g) For airplanes on which any affected carriage spindle is installed: At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, do a detailed inspection (or, as an option for the forward end of the spindle only, a borescope inspection technique may be used) of the spindle for corrosion and potential indications of corrosion of the carriage spindle, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. Do all applicable related investigative actions and corrective actions before further flight. Repeat the detailed inspection (or, as an option for the forward end of the spindle only, the borescope inspection) and certain related investigative actions (i.e., the gap-check or optional non-destructive test (NDT) ultrasonic inspection) at the applicable compliance times specified in the service bulletin.

(1) Within 30 days after the effective date of this AD.

(2) Within 90 days after the installation of a new HVOF-coated spindle.

Note 1: Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, references Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, for further information on accomplishing the related investigative actions.

Inspection Report

(h) If any corrosion, cracking, or severed spindle is found during any inspection required by paragraph (g) of this AD: Within 10 days after the inspection, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results to the Manager, Airline Support, Boeing Commercial Airlines Group, as specified in Note 2 of paragraph 1.D., ''Description,'' of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

Optional Terminating Action

(i) Replacement of an HVOF-coated carriage spindle with a non-HVOF coated carriage spindle in accordance with Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, terminates the requirements of this AD for that carriage spindle only.

Parts Installation

(j) As of the effective date of this AD, an HVOF-coated spindle may be installed on an airplane provided the actions required by paragraph (g) of this AD are done on that spindle.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

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

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on July 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–16483 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0068; Airspace Docket No. 08–AWP–1]

Establishment of Class E Airspace; Carson City, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Carson City, NV. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Carson City Airport, Carson City, NV. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Carson City Airport, Carson City, NV.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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:

History

On April 23, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Carson City Airport, Carson City, NV (73 FR 21858). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Carson City, NV. Controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Carson City Airport, Carson City, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 controlled airspace at Carson City Airport, Carson City, NV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Federal Aviation Administration 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.

* * * * *

AWP NV, E5 Carson City, NV [New]

Carson City Airport, NV
(Lat. 39°11′32″ N., long. 119°44′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Carson City Airport.

* * * * *

Issued in Seattle, Washington, on July 9, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–16516 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0204; Airspace Docket No. 08–AWP–5]

Revocation of Class E Airspace; Luke AFB, Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revoke Class E airspace at Luke AFB, Phoenix, AZ. The United States Air Force (USAF) is closing the airport to Instrument Flight Rules (IFR) operations when the Air Traffic Control Tower (ATCT) is closed.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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:

History

On April 11, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to revoke controlled airspace at Luke AFB, Phoenix, AZ (73 FR 19777). This action would remove class E airspace and restrict IFR aircraft from landing at Luke AFB when the Air Traffic Control tower is closed. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the Class E airspace area at Luke AFB, Phoenix, AZ. The USAF is restricting IFR aircraft landing at Luke AFB, Phoenix, AZ, when the ATCT is closed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAAs authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 revokes controlled airspace at Luke AFB, Phoenix, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AWP AZ E2 Phoenix, Luke AFB, AZ [Revoked]

* * * * *

Issued in Seattle, Washington, on July 9, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–16517 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0187; FRL–8694–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Pike County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004, designations, as well as a 2002 base-year inventory for the Pike County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Pike County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 20, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0187. All documents in the docket are listed in the *www.regulations.gov* Web site.

Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 2008 (73 FR 30350), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Pike County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Pike County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Pike County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the maintenance plan and the 2002 base-year inventory for the Pike County Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 10, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Pike County at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Pike County	12/17/07	*07/21/08*. [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–16476 Filed 7–18–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7793]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changed BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa.	City of Tuscaloosa (08–04–1080P).	June 11, 2008; June 18, 2008; *The Northport Gazette*.	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35403.	October 16, 2008	010203
Arizona: Pima	City of Tucson (08–09–0001P).	June 6, 2008; June 13, 2008; *The Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726.	May 23, 2008	040076
Colorado:					
Routt	Unincorporated areas of Routt County (08–08–0085P).	June 8, 2008; June 15, 2008; *Steamboat Pilot*.	The Honorable Nancy Stahoviak, Chairperson, Routt County, Board of County Commissioners, P.O. Box 3598, Steamboat Springs, CO 80477.	May 30, 2008	080156
Routt	City of Steamboat Springs (08–08–0085P).	June 8, 2008; June 15, 2008; *Steamboat Pilot*.	The Honorable Paul Antonucci, City Council President, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477.	May 30, 2008	080159
Florida: Orange	Unincorporated areas of Orange County (05–04–1535P).	June 5, 2008; June 12, 2008; *Orlando Weekly*.	The Honorable Richard T. Crotty, Mayor, Orange County, 201 South Rosalind Avenue, Fifth Floor, Orlando, FL 32801.	October 10, 2008	120179
Illinois:					
McHenry	Unincorporated areas of McHenry County (08–05–1169P).	June 12, 2008; June 19, 2008; *Northwest Herald*.	The Honorable Kenneth D. Koehler, Chairman, McHenry County Board, McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	October 17, 2008	170732
McHenry	City of Woodstock (08–05–1169P).	June 12, 2008; June 19, 2008; *Northwest Herald*.	The Honorable Brian Sager, Mayor, City of Woodstock, 121 West Calhoun Street, Woodstock, IL 60098.	October 17, 2008	170488
Will County	Village of Frankfort (07–05–5331P).	June 12, 2008; June 19, 2008; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	July 17, 2008	170701
Will County	Unincorporated areas of Will County (08–05–1175P).	June 18, 2008; June 25, 2008; *Herald News*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	October 23, 2008	170695
Indiana: Allen	City of Fort Wayne (08–05–1821P).	June 13, 2008; June 20, 2008; *The Journal Gazette*.	The Honorable Tom Henry, Mayor, City of Fort Wayne, One Main Street, Fort Wayne, IN 46802.	June 3, 2008	180003
Minnesota: St. Louis	City of Duluth (07–05–3554P).	June 12, 2008; June 19, 2008; *Duluth News Tribune*.	The Honorable Don Ness, Mayor, City of Duluth, 411 West First Street, Duluth, MN 55802.	October 17, 2008	270421
North Carolina: Onslow.	City of Jacksonville (08–04–0469P).	June 13, 2008; June 20, 2008; *The Daily News*.	The Honorable Sammy Phillips, Mayor, City of Jacksonville, P.O. Box 128, Jacksonville, NC 28541.	June 6, 2008	370178
Pennsylvania	Township of West Hanover (08–03–0651P).	June 12, 2008; June 19, 2008; *The Patriot News*.	The Honorable Larry Hartman, Chair, Board of Supervisors, West Hanover Township, 7171 Allentown Boulevard, Harrisburg, PA 17112.	October 17, 2008	421600

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–16550 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for

each community.The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Bourbon County, Kansas, and Incorporated Areas Docket No.: FEMA–B–7746			
Marmaton River	At the confluence of Mill Creek	+801	Unincorporated Areas of Bourbon County.
	Approximately 500 feet upstream of Sterwarts Dam	+805	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Parsons

Maps are available for inspection at 112 South 17th Street, Parsons, KS 67357.

Unincorporated Areas of Labette County

Maps are available for inspection at 501 Merchant Street, Oswego, KS 67356.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Tate County, Mississippi, and Incorporated Areas Docket No.: FEMA–D–7822			
Arkabutla Reservoir	Arkabutla Reservoir	+245	Town of Coldwater, Unincorporated Areas of Tate County.
Coldwater River	0.7 Miles Downstream of Arkabutla Reservoir Dam	+195	Unincorporated Areas of Tate County.
	At County Boundary	+252	
Pidgeon Roost Creek	0.6 Miles Downstream of Pidgeon Roost Road	+292	Unincorporated Areas of Tate County.
	400 Ft. Downstream of Pidgeon Roost Road	+295	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Coldwater

Maps are available for inspection at 444 Court Street, Coldwater, MS 38618.

Unincorporated Areas of Tate County

Maps are available for inspection at 201 Ward Street, Senatobia, MS 38668.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Forsyth County, North Carolina and Incorporated Areas Docket Nos.: FEMA–D–7630, FEMA–D–7660, FEMA–B–7749			
Abbotts Creek	Approximately 600 feet downstream of Shields Road	+886	Town of Kernersville.
	Approximately 40 feet downstream of Lindsay Street	+921	
Abbotts Creek Tributary 2	Approximately 350 feet upstream of the confluence with Abbotts Creek.	+866	Unincorporated Areas of Forsyth County, Town of Kernersville.
		+886	
	Approximately 0.4 mile upstream of I–40 Highway		
Abbotts Creek Tributary 2A	At the confluence with Abbotts Creek Tributary 2	+866	Town of Kernersville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
	Approximately 1,250 feet upstream of the confluence with Abbotts Creek Tributary 2.	+888	
Ader Creek	At the confluence with Lick Creek	+721	Unincorporated Areas of Forsyth County.
	Approximately 0.4 mile upstream of the confluence with Lick Creek.	+732	
Bashavia Creek	At the confluence with Yadkin River	+733	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 580 feet upstream of Balsom Road (State Road 1455).	+829	
Beaver Dam Creek	Approximately 250 feet upstream of the confluence with Muddy Creek.	+820	Village of Tobaccoville.
	Approximately 100 feet downstream of Shore Road (State Road 1632).	+822	
Beaver Dam Creek Tributary	At the confluence with Beaver Dam Creek	+821	Village of Tobaccoville.
	Approximately 800 feet upstream of the confluence with Beaver Dam Creek.	+826	
Belews Creek	At the Forsyth/Stokes County boundary	+737	Unincorporated Areas of Forsyth County.
	Approximately 0.8 mile upstream of Old Valley School Road (SR 2024).	+821	
Belews Creek Tributary 4	At the confluence with Belews Creek	+749	Unincorporated Areas of Forsyth County.
	Approximately 1,500 feet upstream of the confluence with Belews Creek.	+758	
Belews Creek Tributary 5	Approximately 750 feet upstream of the confluence with Belews Creek.	+786	Unincorporated Areas of Forsyth County.
	Approximately 1.6 miles upstream of the confluence with Belews Creek.	+850	
Belews Lake	Entire shoreline	+737	Unincorporated Areas of Forsyth County.
Berry Branch	Approximately 0.4 mile upstream of Peachtree Street	+781	City of Winston-Salem.
	Approximately 0.5 mile upstream of Peachtree Street	+784	
Bethabara Branch	Approximately 0.7 mile upstream of Bethabara Road	+818	City of Winston-Salem.
	Approximately 300 feet downstream of Shattalon Drive (State Road 1686).	+822	
Bill Branch	Approximately 80 feet upstream of the dam	+784	Unincorporated Areas of Forsyth County.
	Approximately 0.5 mile upstream of the dam	+785	
Blacks Creek	At the confluence with Double Creek	+708	Unincorporated Areas of Forsyth County.
	Approximately 350 feet upstream of Concord Church Road (State Road 1171).	+716	
Blanket Bottom Creek	At the confluence with Yadkin River	+701	Unincorporated Areas of Forsyth County, Town of Lewisville, Village of Clemmons.
	Approximately 1,950 feet upstream of Kensford Drive	+883	
Brushy Fork	At the Forsyth/Davidson County boundary	+850	Unincorporated Areas of Forsyth County.
	Approximately 20 feet upstream of the Forsyth/Davidson County boundary.	+850	
Brushy Fork Tributary	Approximately 1,200 feet upstream of the confluence with Brushy Fork Creek.	+790	City of Winston-Salem.
	Approximately 1,850 feet upstream of the confluence with Brushy Fork Creek.	+796	
Buffalo Creek (into Town Fork Creek).	Approximately 500 feet downstream of the Forsyth/Stokes County boundary.	+667	Unincorporated Areas of Forsyth County.
	Approximately 50 feet upstream of the Forsyth/Stokes County boundary.	+668	
Buffalo Creek Tributary	At the upstream side of Shiloh Church Road	+740	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of Shiloh Church Road (SR 1932).	+761	
Caudle Branch	At the confluence with Yadkin River	+714	Unincorporated Areas of Forsyth County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
	Approximately 1,040 feet upstream of Hounds Ridge Road.	+730	
Cloverleaf Branch	Approximately 650 feet upstream of Stadium Drive	+791	City of Winston-Salem.
	Approximately 210 feet upstream of U.S. Route 421	+815	
Crooked Run Creek	Approximately 480 feet upstream of Meadowbrook Road (SR 1105).	+856	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 850 feet upstream of the Forsyth/Stokes County boundary.	+884	
Crooked Run Creek Tributary	At the Forsyth/Stokes County boundary	+935	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 500 feet upstream of the confluence of Crooked Run Creek Tributary 2 of Tributary.	+977	
Crooked Run Creek Tributary 1 of Tributary.	At the confluence with Crooked Run Creek Tributary	+953	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 1,100 feet upstream of the confluence with Crooked Run Creek Tributary.	+973	
Crooked Run Creek Tributary 2 of Tributary.	At the confluence with Crooked Run Creek Tributary	+970	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 1,200 feet upstream of the confluence with Crooked Run Creek Tributary.	+986	
Dean Creek	Approximately 0.6 mile upstream of Lenbrook Road (SR 2074).	+816	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of Lenbrook Road (SR 2074).	+827	
Dean Creek Tributary	Approximately 450 feet upstream of the confluence with Dean Creek.	+789	Unincorporated Areas of Forsyth County.
	Approximately 0.5 mile upstream of the confluence with Dean Creek.	+802	
Double Creek	At the confluence with Yadkin River	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.7 mile upstream of the confluence of Blacks Creek.	+708	
East Belews Creek	At the confluence with Belews Creek	+737	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 2.1 miles upstream of Warren Road (SR 2019).	+913	
East Belews Creek Tributary 1	At the confluence with East Belews Creek	+737	Unincorporated Areas of Forsyth County.
	At the Forsyth/Guilford County boundary	+737	
East Belews Creek Tributary 1 of Tributary 1.	At the confluence with East Belews Creek Tributary 1	+737	Unincorporated Areas of Forsyth County.
	At the Forsyth/Guilford County boundary	+737	
East Belews Creek Tributary 2	At the confluence with East Belews Creek	+737	Unincorporated Areas of Forsyth County.
	Approximately 0.7 mile upstream of Benefit Church Road (SR 1970).	+750	
Ellison Creek	At the confluence with Yadkin River	+705	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 1.1 miles upstream of Styers Ferry Road (State Road 1166).	+720	
Fries Branch	At the confluence with Fries Creek	+801	Unincorporated Areas of Forsyth County.
	Approximately 140 feet upstream of Walker Road (State Road 1470).	+846	
Fries Creek	At the confluence with Yadkin River	+739	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of Waller Road (State Road 1470).	+822	
Harley Creek	Approximately 350 feet upstream of the confluence with Belews Creek.	+759	Unincorporated Areas of Forsyth County.
	Approximately 1.9 mile upstream of the confluence with Belews Creek.	+796	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Harmon Mill Creek	Approximately 50 feet downstream side of Masten Drive	+882	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.4 mile upstream of Masten Drive	+892	
Hartley Creek	Approximately 350 feet upstream of the confluence with Belews Creek.	+759	Unincorporated Areas of Forsyth County.
	Approximately 1.9 mile upstream of the confluence with Belews Creek.	+796	
Hauser Creek	At the confluence with Ellison Creek	+705	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the confluence with Ellison Creek.	+718	
Haw River	At the upstream side of Stigall Road	+860	Unincorporated Areas of Forsyth County.
	Approximately 0.8 mile upstream of Stigall Road	+883	
Johnson Creek	At the confluence with Yadkin River	+698	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 0.6 mile upstream of Middlebrook Drive	+768	
Johnson Creek Tributary	At the confluence with Johnson Creek	+698	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 300 feet upstream of Carriagebrook Court	+727	
Johnson Creek Tributary 2	At the confluence with Johnson Creek	+708	Village of Clemmons.
	Approximately 360 feet upstream of Doublegate Drive	+779	
Kansas Branch	At the confluence with Old Field Creek	+715	Unincorporated Areas of Forsyth County.
	Approximately 1.3 mile upstream of the confluence with Old Field Creek.	+890	
Kerners Mill Creek	Approximately 700 feet downstream of Southern Street	+929	Town of Kernersville.
	Approximately 1,560 feet upstream of Southern Street	+954	
Kerners Mill Creek Tributary	Approximately 1,000 feet upstream of the confluence with Kerners Mill Creek.	+899	Town of Kernersville.
	Approximately 390 feet upstream of Deere-Hitachi Road	+958	
Kings Creek	At the confluence with East Belews Creek	+737	Unincorporated Areas of Forsyth County.
	At the Forsyth/Guilford County boundary	+737	
Leak Branch	Approximately 50 feet downstream of the Forsyth/Stokes County boundary.	+703	Unincorporated Areas of Forsyth County.
	Approximately 1.7 miles upstream of the Forsyth/Stokes County boundary.	+878	
Left Fork Belews Creek	At the confluence with Belews Creek	+750	Unincorporated Areas of Forsyth County.
	Approximately 1.2 miles upstream of Rail Fence Road (SR 2009).	+860	
Lick Creek	Approximately 700 feet upstream of the confluence of Right Prong Lick Creek.	+647	Unincorporated Areas of Forsyth County.
	At the confluence of Ader Creek	+721	
Lick Creek Tributary 1	At the Forsyth/Stokes County boundary	+647	Unincorporated Areas of Forsyth County.
	Approximately 1.4 miles upstream of the Forsyth/Stokes County boundary.	+685	
Lick Creek Tributary 2	At the confluence with Lick Creek	+678	Unincorporated Areas of Forsyth County.
	Approximately 750 feet upstream of the confluence with Lick Creek.	+687	
Little Yadkin River	Approximately 0.8 mile upstream of the confluence with Yadkin River.	+765	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of Spainhour Mill Road	+786	
Little Yadkin River Tributary near Perch Road.	At the confluence with Little Yadkin River	+775	Unincorporated Areas of Forsyth County.
	Approximately 2,100 feet upstream of the confluence with Little Yadkin River.	+775	
Little Yadkin River Tributary of Tributary near Perch Road.	At the confluence with Little Yadkin River Tributary near Perch Road.	+775	Unincorporated Areas of Forsyth County.
	Approximately 1,000 feet upstream of the confluence with Little Yadkin River Tributary near Perch Road.	+800	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Lowery Mill Creek	Approximately 1,050 feet downstream of New Walkertown Road/U.S. Highway 311.	+894	Unincorporated Areas of Forsyth County.
	Approximately 330 feet downstream of New Walkertown Road/U.S. Highway 311.	+901	
Mary Reich Creek	At the Forsyth/Davidson County boundary	+811	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the Forsyth/Davidson County boundary.	+835	
Mill Creek (into Old Field Creek).	At the confluence with Old Field Creek	+718	Unincorporated Areas of Forsyth County.
	Approximately 0.5 mile upstream of the confluence with Old Field Creek.	+731	
Mill Creek No. 3	Approximately 0.9 mile upstream of Bowens Road (State Road 1625).	+869	Unincorporated Areas of Forsyth County, Village of Tobaccoville.
	Approximately 840 feet upstream of Tobaccoville Road	+999	
Mill Creek Tributary	Approximately 830 feet upstream of East Hanes Mill Road	+824	City of Winston-Salem.
	Approximately 1,190 feet upstream of East Hanes Mill Road.	+830	
Mill Creek West	At the confluence with Yadkin River	+730	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 0.4 mile upstream of Wyntfield Drive	+822	
Muddy Creek	At the downstream side of Interstate 40	+710	Unincorporated Areas of Forsyth County, City of Winston-Salem, Village of Clemmons.
	Approximately 0.9 mile upstream of South Peace Haven Road (State Road 1140).	+718	
Muddy Creek Tributary	Approximately 200 feet upstream of Cedar Trails	+758	City of Winston-Salem.
	Approximately 1,000 feet upstream of Cedar Trails	+778	
Muddy Creek Tributary 1A	Approximately 400 feet upstream of the confluence with Muddy Creek Tributary.	+748	City of Winston-Salem.
	Approximately 0.4 mile upstream of the confluence with Muddy Creek Tributary.	+791	
Old Field Creek	Approximately 0.4 mile downstream of Dennis Road (SR 1943).	+653	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of the confluence of Mill Creek (into Old Field Creek).	+757	
Old Richmond Creek	At the confluence with Yadkin River	+753	Unincorporated Areas of Forsyth County.
	Approximately 2.7 miles upstream of Donnaha Road (State Road 1600).	+844	
Panther Creek	At the confluence with Double Creek	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.8 mile upstream of Williams Road (State Road 1173).	+717	
Panther Creek Tributary 1	At the confluence with Panther Creek	+708	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of the confluence with Panther Creek.	+723	
Parkway Branch	At the confluence with Salem Creek	+742	City of Winston-Salem.
	Approximately 1,580 feet upstream of South Main Street	+826	
Paynes Branch	Approximately 50 feet downstream of the Forsyth/Stokes County boundary.	+778	Unincorporated Areas of Forsyth County.
	Approximately 1.1 miles upstream of the Forsyth/Stokes County boundary.	+890	
Paynes Branch Tributary	At the Forsyth/Stokes County boundary	+863	Unincorporated Areas of Forsyth County.
	Approximately 0.5 mile upstream of the Forsyth/Stokes County boundary.	+898	
Peters Creek	Approximately 1,260 feet upstream of the confluence of North School Branch.	+836	City of Winston-Salem.
	Approximately 1,550 feet upstream of the confluence of North School Branch.	+837	
Red Bank Creek	At the Forsyth/Stokes County boundary	+694	Unincorporated Areas of Forsyth County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
	Approximately 3.9 miles upstream of the Forsyth/Stokes County boundary.	+904	
Reedy Fork	At the Forsyth/Guilford County boundary	+878	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.6 mile upstream of the Forsyth/Guilford County boundary.	+892	
Reedy Fork (Stream No. 51)	At the Forsyth/Guilford County boundary	+878	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 0.6 mile upstream of the Forsyth/Guilford County boundary.	+892	
Reynolds Creek	Approximately 1,500 feet upstream of Fairhaven Road	+781	Town of Lewisville.
	Approximately 0.8 mile upstream of Fairhaven Road	+810	
Right Prong Lick Creek	At the confluence with Lick Creek	+651	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of West Road (SR 1954)	+681	
Rough Fork	Approximately 1,700 feet upstream of the confluence with Buffalo Creek (into Town Fork Creek).	+705	Unincorporated Areas of Forsyth County.
	Approximately 1.3 miles upstream of Germanton Road (SR 1725).	+736	
Salem Creek	Approximately 100 feet downstream of Ebert Road	+727	Unincorporated Areas of Forsyth County, City of Winston-Salem.
	Approximately 250 feet upstream of Silas Creek Parkway/ NC Highway 67.	+746	
Silas Creek	Approximately 0.6 mile upstream of Old Town Club Drive	+889	City of Winston-Salem.
	Approximately 90 feet downstream of University Parkway	+896	
South Fork Muddy Creek	Approximately 350 feet downstream of High Point Road	+877	Unincorporated Areas of Forsyth County, City of Winston-Salem.
	Approximately 0.8 mile upstream of Temple School Road (State Road 2685).	+935	
Spurgeon Creek	At the Forsyth/Davidson County boundary	+819	Unincorporated Areas of Forsyth County.
	Approximately 0.9 mile upstream of the Davidson/Forsyth County boundary.	+847	
Terry Road Branch	Approximately 75 feet downstream of Terry Road	+883	City of Winston-Salem.
	Approximately 300 feet upstream of Salem Gardens Drive	+917	
Tomahawk Branch	Approximately 300 feet upstream of Twin Meadows Drive	+784	Unincorporated Areas of Forsyth County, Town of Lewisville.
	Approximately 300 feet downstream of Robinhood Road	+794	
Town Fork Creek	Approximately 100 feet downstream of the Forsyth/Stokes County boundary.	+687	Unincorporated Areas of Forsyth County.
	At the confluence of Leak Branch	+703	
Town Fork Creek Tributary 5	At the confluence with Town Fork Creek	+689	Unincorporated Areas of Forsyth County.
	Approximately 1,000 feet upstream of the confluence with Town Fork Creek.	+705	
Town Fork Creek Tributary 6	At the confluence with Town Fork Creek	+698	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of Par Farm Road	+768	
Yadkin River	At the Forsyth/Davidson County boundary	+691	Unincorporated Areas of Forsyth County, Town of Lewisville, Village of Clemmons.
	Approximately 700 feet upstream of the Forsyth/Surry County boundary.	+758	
Yadkin River Tributary 4	At the confluence with Yadkin River	+702	Unincorporated Areas of Forsyth County, Village of Clemmons.
	Approximately 0.9 mile upstream of the confluence with Yadkin River.	+718	
Yadkin River Tributary 5	At the confluence with Yadkin River	+713	Unincorporated Areas of Forsyth County.
	Approximately 740 feet upstream of Williams Road (State Road 1173).	+732	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Yadkin River Tributary 6	At the confluence with Yadkin River	+723	Unincorporated Areas of Forsyth County.
	Approximately 0.7 mile upstream of the confluence with Yadkin River.	+727	
Yadkin River Tributary 7	At the confluence with Yadkin River	+724	Unincorporated Areas of Forsyth County.
	Approximately 0.6 mile upstream of the confluence with Yadkin River.	+734	
Yadkin River Tributary 8	At the confluence with Yadkin River	+727	Unincorporated Areas of Forsyth County.
	Approximately 1.0 mile upstream of the confluence with Yadkin River.	+731	
West Belews Creek	Approximately 0.8 mile downstream of NC–69	+737	Unincorporated Areas of Forsyth County.
	Approximately 1 mile upstream of Tyner Road (SR 2008)	+810	
West Belews Creek Tributary	At the confluence with West Belews Creek	+767	Unincorporated Areas of Forsyth County.
	Approximately 1.2 miles upstream of the confluence with West Belews Creek.	+799	
West Fork Deep River	Approximately 0.7 mile upstream of Interstate 40	+890	Unincorporated Areas of Forsyth County, Town of Kernersville.
	Approximately 240 feet downstream of Industrial Park Drive.	+903	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Winston-Salem

Maps are available for inspection at City of Winston-Salem Inspections Department, 100 East First Street, Suite 328, Winston-Salem, North Carolina.

Town of Kernersville

Maps are available for inspection at Kernersville Town Hall, Planning Department, 134 East Mountain Street, Kernersville, North Carolina.

Town of Lewisville

Maps are available for inspection at Lewisville Town Hall, 6550 Shallowford Road, Lewisville, North Carolina.

Unincorporated Areas of Forsyth County

Maps are available for inspection at Forsyth City/County Planning Board Office, 100 East First Street, Winston-Salem, North Carolina.

Village of Clemmons

Maps are available for inspection at Clemmons Village Hall, 3715 Clemmons Road, Clemmons, North Carolina.

Village of Tobaccoville

Maps are available for inspection at Tobaccoville Village Hall, 6936 Doral Drive, Tobaccoville, North Carolina.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–16546 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[FCC 04–87]

Universal Service Support for Low-Income Consumers; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** at 69 FR 34590, June 22, 2004. The regulations related to the information reporting requirements for eligible telecommunications carriers (ETCs) contained in section 54.410 of the Code of Federal Regulations.

DATES: Effective July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Dana Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

Background

In a Report and Order and Further Notice of Proposed Rulemaking, the Commission modified rules to improve the effectiveness of the low-income universal service support mechanism. Among other steps taken, the order requires collection of certain

information to certify and subsequently verify that beneficiaries of low-income support are qualified to receive the support.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 54

Communications common carriers, Infants and children, Reporting and recordkeeping requirements, Telecommunications, Telephone.

■ Accordingly, 47 CFR Part 54, Subpart E is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE FOR LOW-INCOME CONSUMERS

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Section 54.410 is amended by revising paragraph (b) introductory text and (c) to read as follows:

§ 54.410 Certification and Verification of Consumer Qualification for Lifeline.

* * * * *

(b) Self-certifications. After income certification procedures are implemented, eligible telecommunications carriers and consumers are required to make certain self-certifications, under penalty of perjury, relating to the Lifeline program. Eligible telecommunications carriers must retain records of their self-certifications and those made by consumers.

* * * * *

(c) Verification of Continued Eligibility. Consumers qualifying for Lifeline may be required to verify continued eligibility on an annual basis.

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers' continued eligibility for Lifeline. The eligible telecommunications carrier must be able to document that it is complying with state regulations and verification requirements.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. Eligible telecommunications carriers may verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may survey subscribers directly and provide the results of the sample to the Administrator. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Subscribers who are subject to this verification and qualify under the income-based eligibility criteria must prove their continued eligibility by presenting current income documentation consistent with the income-certification process in § 54.410(a)(2). These subscribers must also self-certify, under penalty of perjury, the number of individuals in their household and that the documentation presented accurately represents their annual household income. An officer of the eligible telecommunications carrier must certify, under penalty of perjury, that the company has income verification procedures in place and that, to the best of his or her knowledge, the company was presented with corroborating documentation. The eligible telecommunications carrier must retain records of these certifications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16608 Filed 7–18–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 235, and 252

RIN 0750–AF13

Defense Federal Acquisition Regulation Supplement; Export-Controlled Items (DFARS Case 2004–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for complying with export control laws and regulations when performing DoD contracts. The rule recognizes contractor responsibilities to comply with existing Department of Commerce and Department of State regulations. The rule adds two new clauses to be used when export-controlled items, including information or technology, are expected to be involved in the performance of a contract, or when there is a possibility that export-controlled items, including information or technology, may come to be involved during the period of performance of the contract.

DATES: *Effective date:* July 21, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 19, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D010, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2004–D010 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Felisha Hitt, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, 703–602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule at 70 FR 39976 on July 12, 2005, to address requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts. In consideration of the public comments received, DoD published a second proposed rule at 71 FR 46434 on August 14, 2006. The second proposed rule simplified the policy framework in recognition of existing policy found in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), enacted on January 28, 2008, requires DoD to prescribe regulations, not later than July 26, 2008, to address requirements for DoD contractors to comply with laws and regulations applicable to goods or technology subject to export controls. In view of this new statutory requirement, and in consideration of the public comments received in response to the second proposed rule, DoD has developed an interim rule to address export controls. The differences between the second proposed rule and this interim rule include—

• Definition and use of the term ''export-controlled items'' instead of ''export-controlled information and technology,'' to more appropriately describe what is controlled by the ITAR and EAR and addressed by this rule.

• Information in the definition of ''items'' with respect to the EAR to clarify that access to an ''export-controlled item'' is not necessarily subject to the EAR. Only technology and software source code (and not commodities) are subject to the EAR when released to a foreign national inside the United States.

• Relocation of the definition of ''fundamental research'' to DFARS 204.7301, because the proposed clause containing the definition has been excluded from the interim rule.

• Addition of a definition of ''applied research'' in DFARS 204.7301, since the term is used within the definition of ''fundamental research'' in that section. The definition of ''applied research'' is consistent with the one found at FAR 35.001. Although the term ''basic research'' is also used within the definition of ''fundamental research,'' a definition of that term is not included in 204.7301, since the term is defined in FAR 2.101 for general use throughout the FAR system.

• Addition of references to the ITAR and the EAR in 204.7302 for clarity.

• Relocation of procedural requirements, formerly in 204.7303, Policy, to a new Procedures section at 204.7304.

• Clarification of the clause prescription at 204.7305(a) (formerly 204.7304(a)).

• Reduction of the number of contract clauses from three to two by eliminating the separate clause for fundamental research contracts.

• Addition of text in the clause at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, to specify that, if during performance of the contract, the contractor becomes aware and notifies the contracting officer that the contractor will generate or need access to export-controlled items, the contracting officer may, as one of three possible courses of action, terminate the contract in whole or in part for the convenience of the Government.

DoD received comments from 167 persons or organizations in response to the second proposed rule. The comments are grouped into the following seven categories:

1. National policy concerns.
2. Concerns with the scope or text of the rule.
3. Requirement that the contract clause include a list of specific information and/or technology subject to export controls.
4. Ability of DoD to identify export-controlled information and technology.
5. Flow-down of export control clauses to subcontracts.
6. Termination for convenience.
7. Reasonable limits on identifying foreign persons.

The following is a discussion of the comments and the changes included in this interim rule as a result of those comments:

1. National Policy Concerns

a. *Comment:* Many individual citizens were concerned about foreign access to classified information.

DoD Response: It is important to understand that this DFARS rule is intended to reinforce the statutory and regulatory requirements that must be in place prior to foreign national access to any export-controlled items, including information or technology, whether classified or not. Access to classified information or technology is subject to additional requirements. The second proposed rule and this interim rule do not permit foreign students or workers access to classified information. To the contrary, this interim rule reminds universities and companies of their responsibility to comply with export control laws and regulations. It also directs contracting officers to include clauses in solicitations and contracts, as appropriate, to clearly inform contractors of their responsibilities when export-controlled items are expected to be or may be involved in the performance of the contract.

b. *Comment:* Thirty-eight respondents voiced concern regarding the loss of jobs for U.S. citizens to foreign workers and graduate students.

DoD Response: The DFARS rule neither encourages nor endorses the use of foreign workers or students. One purpose of the rule is to ensure that appropriate contracts include a clause that informs contractors that export-controlled items are expected to be involved in the performance of their contracts and to remind them of their separate responsibility to comply with export control laws and regulations.

c. *Comment:* Eleven respondents expressed concern regarding the security risks of outsourcing jobs or using foreign students for DoD research.

DoD Response: This DFARS rule should have the effect of reducing the risk of unauthorized access to export-controlled information or technology under DoD contracts. The rule requires DoD to inform contractors if export-controlled items are expected to be involved in contract performance, and to remind contractors of their responsibility to comply with export control laws and regulations.

d. *Comment:* Comments received from universities and their associations stated that the rule conflicts with National Security Decision Directive (NSDD) 189, because fundamental research is shielded from export control laws. Twenty-one respondents wanted DoD to ensure that no restrictions would apply to fundamental research.

DoD Response: This DFARS rule is consistent with existing laws, Executive orders, and regulations. NSDD 189 provides an exception to its own applicability when the directive conflicts with applicable statutes. NSDD 189 states, ''No restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes.'' Export control laws are applicable statutes. It should also be noted that fundamental research, as defined by NSDD 189, does not involve ''proprietary research * * *, industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.'' Most DoD contracts awarded for conducting fundamental research do not involve export-controlled information or technology. However, there are rare instances in which export-controlled information or technology may be used to conduct fundamental research. In such cases, the entity must be in compliance with the applicable export control laws and regulations. Also, there is a borderline where fundamental research meets more advanced applied research and development. One purpose of the DFARS rule is to remind universities that they must notify the contracting officer when they have reason to believe this line may be crossed.

e. *Comment:* Twenty-six respondents stated that hiring competent U.S. workers reduces security risk.

DoD Response: The DFARS rule does not address the impact of workforce competency on security. Therefore, this comment does not affect the content of the rule.

f. *Comment:* Many respondents commented on issues associated with foreign workers. These included concerns about the H–1b visa process; willingness of foreign workers to accept lower wages; increasing dependence on foreign researchers undermining the future U.S. science and engineering base; the need for immigration law reform; relaxing security requirements for foreign students; minority citizen unemployment; and weak academic credentials of some foreign students.

DoD Response: These comments are not applicable to this DFARS rule. The DFARS rule directs contracting officers to inform contractors when they know, based on input from the requiring activity, that export-controlled items are expected to be involved in the performance of a DoD contract, and to remind DoD contractors of their responsibility to comply with export control laws and regulations.

g. *Comment:* Several respondents commented on the administrative cost or cost-effectiveness of complying with export control laws and regulations. Twenty of these comments dealt with specific steps associated with compliance. Seven responses contained reminders that key technologies and/or national security data must be safeguarded regardless of the cost.

DoD Response: These comments are not applicable to this DFARS rule. While the cost of compliance with export control laws and regulations may be relatively small or large, this DFARS rule does not add to or subtract from that cost. All U.S. persons are responsible for complying with export control laws and regulations (which were not created or augmented by this rule), and this rule does not exempt anyone from that responsibility.

2. Concerns With the Scope or Text of the Rule

a. *Comment:* Twenty-five respondents from the university community expressed concern that the second proposed rule was still too broad or that it went beyond reminding contractors of their separate EAR and ITAR responsibilities. Seemingly related comments from some of the same respondents added that DoD should leave the subject to the Department of State and the Department of Commerce.

DoD Response: DoD does not believe that the DFARS rule goes beyond reminding contractors of their responsibilities. The rule requires contracting officers to include an appropriate clause in solicitations and contracts if export-controlled items are expected to be involved in contract performance, as determined by the requiring activity. This is the method for ''reminding'' contractors, i.e., getting the required information into solicitations and contracts. The clause language clearly directs contractors to the ITAR and the EAR, and to the Department of State and the Department of Commerce for answers to questions about ITAR and EAR requirements. DoD relies on the Departments of State and Commerce to administer their export control programs.

b. *Comment:* Twenty-six respondents stated that fundamental research cannot generate controlled information or technology.

DoD Response: DoD disagrees with this comment, because there are situations in which export controls may affect the conduct of fundamental research:

(1) Although fundamental research cannot by definition result in export-controlled information, fundamental research can evolve into more advanced applied research. At this transition point, the research may involve export-controlled information or technology. The instances when this happens midway through a research contract may be rare. However, almost all applied research is an outgrowth of work that began as fundamental research. There is a point at which certain research projects become specific enough to involve export-controlled information or technology. To maintain national security, DoD and its contractors must be mindful of their responsibility to identify that crossover point.

(2) When export-controlled information or technology is used to conduct fundamental research.

(3) When the distribution of the results of fundamental research is restricted due to proprietary reasons or if the research has received national security classification (see EAR section 734.8).

c. *Comment:* Nineteen respondents requested clarification of the proposed clause at 252.204–70XX, Requirements for Contracts Involving Export-Controlled Information or Technology. Some respondents questioned if all technology must be identified, even if applicable licensing permitted its use. Other respondents requested guidance for situations where exclusions for other than fundamental research exist, such as those for published materials or bona fide employees.

DoD Response: Export-controlled items, including information and technology, remain controlled under applicable statutes even if an exemption applies in a particular situation. Neither the prescriptive language of the DFARS rule, nor the clauses prescribed for use, are the appropriate place for guidance or information regarding exemptions. Note that the DFARS rule does not include the requirement that specific export-controlled information or technology be identified in the contract clause. (See the DoD Response to the Comment in section 3 of this discussion.)

d. *Comment:* Several respondents stated that the structure of the clauses is more complex than necessary. They recommended two clauses instead of three.

DoD Response: The interim rule reduces the number of clauses from three to two.

3. Requirement That the Contract Clause Include a List of Specific Information and/or Technology Subject to Export Controls

Comment: One respondent objected to the requirement in the proposed clause at 252.204–70XX, for a list of the specific export-controlled information and/or technology, which the parties are to keep current during the period of contract performance. The respondent recommended elimination of this requirement, because it is unnecessary and would create the possibility of a contractor being in breach of the clause due to inadvertent errors in the list, even if the contractor has an adequate export control system.

DoD Response: DoD considered the requirement and concluded that a different approach would better achieve the intended purpose while being less burdensome. A DoD Inspector General report on this subject (D–2004–061) stressed the importance of identifying export-controlled information and technology in DoD contracts to ensure the awareness necessary to prevent unauthorized disclosure. A key message in the DoD Inspector General report was that there is an inadequate understanding of export control requirements among some in the contractor community, and inadequate attention paid to the effect export controls have on the performance of DoD contracts. Identifying the export-controlled information and technology involved in the performance of the contract was intended to ensure that inexperienced contractors understand what must be controlled, and that

experienced contractors and their Government counterparts share a common understanding of the export-controlled information and technology involved in the contractor's proposed approach to satisfying contract requirements. Mindful of this underlying intent, and considering the merits of the public comments, DoD considered an alternative that would achieve the intended result. That alternative was to require the clause to identify the category(ies) of export-controlled information and/or technology (rather than the specific export-controlled information and/or technology) expected to be involved in performance of the contract. This alternative proved unacceptable, however, to the agencies of the Federal Government responsible for enforcing export control laws and regulations. From their point of view, it is important that any contract clause be free of information that could possibly create ambiguity about the contractor's responsibility to comply with export control laws and regulations. As a result, the DFARS rule will cause requiring activities, contracting officers, offerors, and contractors to be aware that export-controlled items, including information and technology, are expected to be involved in performance of the contract, but it will not require identification of the export-controlled items. The contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided in the rule or the prescribed contract clauses.

4. Ability of DoD To Identify Export-Controlled Information and Technology

Comment: Several respondents stated that DoD contracting officers are not qualified to identify controlled information and technology, nor do they know when exclusions and exemptions from licensing requirements apply.

DoD Response: DoD agrees that this is not an area in which DoD contracting officers are expected to have expertise. The DFARS rule does not require contracting officers to identify specific export control classifications or categories for the information or technology involved. Moreover, the DFARS rule notes that the agencies responsible for the ITAR and EAR have responsibility for providing authoritative guidance on such matters. The DFARS rule assigns to the requiring activity the responsibility for determining whether export-controlled items are expected to be involved in performance of a contemplated contract. Requiring activity personnel are responsible for determining if a research proposal merits funding and whether the Government receives adequate value for services performed. Training for such requiring activity personnel (and contracting officers) is presently available through the Defense Acquisition University. This training is being supplemented to make it more suitable for personnel responsible for implementing this DFARS rule and to keep the information current and share lessons learned.

5. Flow-Down of Export Control Clauses to Subcontracts

Comment: Several respondents stated that the flow-down of any export-control related clauses is problematic for universities. Commercial entities may not be aware of NSDD 189 and fundamental research. Overuse of the clause when unnecessary could harm the university-industry-government research partnership.

DoD Response: The clause in the interim rule at DFARS 252.204–7008, Requirements for Contracts Involving Export-Controlled Items, requires flow-down only to subcontracts that are expected to involve access to or generation of export-controlled items. The clause in the interim rule at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, must be used when the parties do not anticipate that the contractor will generate or need access to export-controlled items and does not include a flow-down requirement.

6. Termination for Convenience

Comment: One respondent requested that termination for convenience be allowed for those projects that begin as fundamental research but later develop export control issues.

DoD Response: The clause in the interim rule at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, addresses this issue. Paragraph (c) of the clause states that if, during performance of the contract, the contractor notifies the contracting officer that the contractor will generate or need access to export-controlled items, the contracting officer may, as one of three possible courses of action, terminate the contract in whole or in part for the convenience of the Government in accordance with the Termination clause of the contract.

7. Reasonable Limits on Identifying Foreign Persons

Comment: One respondent commented that DoD should place limits on identifying foreign persons and should avoid unnecessarily broad reviews of individuals working on subcontracted research efforts at universities.

DoD Response: The comment is not relevant to this DFARS rule. The rule does not address requirements for identification of foreign persons.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all contractors, including small entities, are already subject to export-control laws and regulations. The requirements of this rule reinforce existing responsibilities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D010.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 890(a) requires DoD to prescribe regulations, not later than July 26, 2008, requiring DoD contractors providing goods or technology subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 to comply with those Acts and applicable regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 204, 235, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 235, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 235, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Subpart 204.73 is added to read as follows:

Subpart 204.73—Export-Controlled Items

Sec.

204.7300 Scope of subpart.
204.7301 Definitions.
204.7302 General.
204.7303 Policy.
204.7304 Procedures.
204.7305 Contract clauses.

Subpart 204.73—Export-Controlled Items

204.7300 Scope of subpart.

This subpart implements Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

204.7301 Definitions.

As used in this subpart—

Applied research means the effort that—

(1) Normally follows basic research, but may not be severable from the related basic research;

(2) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(3) Attempts to advance the state of the art.

Export-controlled items is defined in the clauses at 252.204–7008 and 252.204–7009.

Fundamental research, as defined by National Security Decision Directive (NSDD) 189, means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of items to unauthorized persons. The International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) establish these restrictions. See PGI 204.7302 for additional information.

204.7303 Policy.

(a) It is in the interest of both the Government and the contractor to have a common understanding of export-controlled items expected to be involved in contract performance.

(b) The requiring activity shall review each acquisition to determine if, during performance of the contemplated contract, the contractor is expected to generate or require access to export-controlled items.

204.7304 Procedures.

(a) Prior to issuance of a solicitation for research and development, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled items are expected to be involved; or

(2) The work is fundamental research only, and export-controlled items are not expected to be involved.

(b) Prior to issuance of a solicitation for supplies or services, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled items are expected to be involved; or

(2) The requiring activity is unable to determine that export-controlled items will not be involved. See PGI 204.7304 for guidance regarding this notification requirement.

204.7305 Contract clauses.

(a) Use the clause at 252.204–7008, Requirements for Contracts Involving Export-Controlled Items, in solicitations and contracts when the requiring activity provides the notification at 204.7304(a)(1) or (b)(1), indicating that export-controlled items are expected to be involved in the performance of the contract.

(b) Use the clause at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, in solicitations and contracts—

(1) For research and development, except when the clause at 252.204–7008 will be included; or

(2) For supplies and services, when the requiring activity provides the notification at 204.7304(b)(2).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Redesignated]

■ 3. Section 235.071 is redesignated as section 235.072.

■ 4. A new section 235.071 is added to read as follows:

235.071 Export-controlled items.

For requirements regarding access to export-controlled items, see Subpart 204.73.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Sections 252.204–7008 and 252.204–7009 are added to read as follows:

252.204–7008 Requirements for contracts involving export-controlled items.

As prescribed in 204.7305(a), use the following clause:

Requirements for Contracts Involving Export-Controlled Items (Jul 2008)

(a) *Definition. Export-controlled items*, as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) or the International Traffic in Arms Regulations (22 CFR Parts 120–130). The term includes:

(1) *Defense items*, defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data. The term ''defense items'' includes information and technology.

(2) *Items*, defined in the EAR as ''commodities, software, and technology,'' terms that are also defined in the EAR, 15 CFR 772.1. Regarding the release of items subject to the EAR to foreign nationals within the United States, ''items'' only include technology and software source code (and not commodities) subject to the EAR.

(b) The parties anticipate that, in the performance of this contract, the Contractor will generate or need access to export-controlled items.

(c) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to the ITAR and with the Department of Commerce regarding any questions relating to the EAR.

(d) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(e) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420);

(2) The Arms Export Control Act of 1976 (22 U.S.C. 2751 *et seq.*);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701–1707);

(4) The Export Administration Regulations (15 CFR Parts 730–774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120–130);

(6) Executive Order 13222, as extended;

(7) DoD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions; and

(8) DoD Industrial Security Regulation (DoD 5220.22–R).

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that are expected to involve access to or generation of export-controlled items.

(End of clause)

252.204–7009 Requirements regarding potential access to export-controlled items.

As prescribed in 204.7305(b), use the following clause:

Requirements Regarding Potential Access to Export-Controlled Items (Jul 2008)

(a) *Definition. Export-controlled items,* as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) or the International Traffic in Arms Regulations (22 CFR Parts 120–130). The term includes:

(1) *Defense items,* defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data. The term ''defense items'' includes information and technology.

(2) *Items,* defined in the EAR as ''commodities, software, and technology,'' terms that are also defined in the EAR, 15 CFR 772.1. Regarding the release of items subject to the EAR to foreign nationals within the United States, ''items'' only include technology and software source code (and not commodities) subject to the EAR.

(b) The parties do not anticipate that, in the performance of this contract, the Contractor will generate or need access to export-controlled items.

(c) If, during the performance of this contract, the Contractor becomes aware that the Contractor will generate or need access to export-controlled items—

(1) The Contractor shall notify the Contracting Officer in writing; and

(2) The Contracting Officer will expeditiously—

(i) Modify the contract to include the Defense Federal Acquisition Regulation Supplement clause 252.204–7008, Requirements for Contracts Involving Export-Controlled Items;

(ii) Negotiate a contract modification that eliminates the requirement for performance of work that would involve export-controlled items; or

(iii) Terminate the contract, in whole or in part, as may be appropriate, for the convenience of the Government, in accordance with the Termination clause of the contract.

(End of clause)

252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 [Amended]

■ 6. Sections 252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 are amended in the introductory text by removing ''235.071'' and adding in its place ''235.072''.

[FR Doc. E8–16673 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 13

RIN 1018–AV63

Migratory Bird Permits; Addresses for Applications for Eagle and Migratory Bird Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We correct omissions in our list of addresses the public can use to submit permit applications to conduct activities with migratory birds or with bald eagles or golden eagles.

DATES: This rule is effective on July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

We are the Federal agency delegated the primary responsibility for managing migratory birds, as authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We correct omissions of States, territories, and possessions in 50 CFR 13.11(b)(5), in which we have listed addresses for the public to use to submit permit applications to conduct activities with migratory birds or with bald eagles or golden eagles.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely making administrative corrections to omissions in the lists of States, territories, and possessions we include in our regulations with our addresses for the public to use to request or submit permit applications for activities with bald or golden eagles or migratory birds. Further, it is in the public's best interest to have access to these corrected lists as soon as possible. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements, we find that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This rule does not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are no costs associated with this rule.

b. This rule does not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

c. This rule does not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of migratory birds.

d. This rule does not raise novel legal or policy issues. The regulations change is in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any 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 government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule does not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule does not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action does not have a significant economic impact on a substantial number of small entities, because the changes simplify/clarify application addresses for the public.

There are no costs associated with this regulations change. Consequently, we certify that because this rule does not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It does not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This rule does not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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

a. This rule does not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. This rule does not affect small government activities in any significant way.

b. This rule does not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications because it does not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It does not interfere with the States' ability to manage their programs or their funds. No significant economic impacts will result from correcting the listings of Migratory Bird Permits offices and the areas for which they are responsible.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this rule. We may not collect or sponsor, nor is a person required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and Part 516 of the U.S. Department of the Interior Manual (516 DM). This regulations change correcting the listing of States, territories, and possessions does not have any environmental impact.

Environmental Consequences of the Action

Socioeconomic. This rule does not have any socioeconomic impacts.

Migratory bird populations. This rule does not affect migratory bird populations.

Endangered and threatened species. The regulation is administrative, and does not affect threatened or endangered species or critical habitats.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat '' (16 U.S.C. 1536 (a)(2)). The regulations change does not affect listed species in any way.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have determined that there are no potential effects of this rule on Federally recognized Indian Tribes. This rule does not interfere with the Tribes' ability to manage themselves or their funds, or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This regulations change is not a significant regulatory action under E.O. 12866, and does not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

List of Subjects in 50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 13 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority for Part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Amend § 13.11(b)(5) by revising the entries for Region 1 and Region 4 to read as follows:

* * * * *

(b) * * *

(5) * * *

Region 1 (CA, HI, ID, NV, OR, WA, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and other Pacific possessions): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, 911 N.E. 11th Avenue, Portland, OR 97232–4181.

* * * * *

Region 4 (AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, PR, VI, and Caribbean possessions): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 49208, Atlanta, GA 30359.

* * * * *

Dated: July 2, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–16526 Filed 7–18–08; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 73, No. 140
Monday, July 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0734; Directorate Identifier 2008–NM–004–AD]

RIN 2120–AA64

Airworthiness Directives; Maryland Air Industries, Inc., Model Fairchild F–27 and FH–227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Maryland Air Industries, Inc., Model Fairchild F–27 and FH–227 series airplanes. This proposed AD would require operators to modify their airplanes and revise their inspection or maintenance programs to incorporate instructions for maintenance and inspection of the fuel tank systems, as appropriate, by December 16, 2008, using information developed in accordance with SFAR 88. This proposed AD results from fuel system safety reviews done on similar airplane models in accordance with SFAR 88. These safety reviews identified potential unsafe conditions on Model Fairchild F–27 and FH–227 series airplanes for which the type certificate holder, Maryland Air Industries, Inc., has not conducted SFAR 88 safety reviews, has not provided corrective actions, and does not plan to do so. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by September 4, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0734; Directorate Identifier 2008–NM–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC) design approval) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to design approval holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of

previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

FAA's Findings

Maryland Air Industries, Inc., which held type certificate 7A1 for Model Fairchild F–27 and FH–227 series airplanes, stated that it did not have the resources to conduct SFAR 88 safety reviews for the affected airplane models. Therefore, Maryland Air Industries, Inc., has neither conducted the safety reviews nor provided service information required under SFAR 88 that would lead the FAA to make a finding of compliance. Furthermore, Maryland Air Industries, Inc., has surrendered the type certificate to the New York Aircraft Certification Office (ACO), FAA. Because Maryland Air Industries, Inc., has not accomplished the actions required by SFAR 88, this NPRM would propose to require that the affected operators perform these actions, or work with a third party to do so.

This NPRM proposes to require operators to modify their airplanes and revise their inspection or maintenance programs to incorporate instructions for maintenance and inspection of the fuel tank systems, as appropriate, by December 16, 2008, using information developed in accordance with SFAR 88. Note that the FAA has issued operational rules that would effectively ground the domestic fleet of F–27 and FH–227 models given that there is no maintenance information or any design change developed in accordance with SFAR 88. These operational rules (Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety Regulations: Amendments 91–297, 121–336, 125–53, and 129–43) would have the same effect as the AD for domestic operators, but because the operational rules do not apply to foreign operators, we are obligated to issue the AD to comply with our requirements as an International Civil Aviation Organization (ICAO) member state.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information, including the results of an SFAR 88 compliance finding on similar airplane models, and determined that the unsafe conditions identified in that review are likely to exist or develop in other products of this same type design. This proposed AD would require operators to submit a plan for compliance. Before December 16, 2008, operators would also be required to modify the airplane and revise the inspection or maintenance program to incorporate instructions for maintenance and inspection of the fuel tank system, as appropriate, using information developed in accordance with the applicable provisions of SFAR 88.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 29 airplanes of U.S. registry. We recognize that this proposed AD may impose certain costs. However, we cannot calculate those costs because we cannot anticipate the complexity or content of the plans that operators will submit to the FAA. However, continued operational safety necessitates the imposition of these costs because of the severity of the unsafe condition.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Maryland Air Industries, Inc.: Docket No. FAA–2008–0734; Directorate Identifier 2008–NM–004–AD.

Comments Due Date

(a) We must receive comments by September 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model Fairchild F–27, F–27A, F–27B, F–27F, F–27G, F–27J, F–27M, FH–227, FH–227B, FH–227C, FH–227D, and FH–227E series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system safety reviews done on similar airplane models in accordance with Special Federal Aviation Regulation No. 88 (SFAR 88). These safety reviews identified potential unsafe

conditions on Model Fairchild F–27 and FH–227 series airplanes for which the type certificate holder, Maryland Air Industries, Inc., has not conducted SFAR 88 safety reviews, has not provided corrective actions, and does not plan to do so. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, New York Aircraft Certification Office, FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120–0056.

(1) The airplane registration and operational status.

(2) A plan for how the airplane operator plans to comply with paragraph (g) of this AD.

SFAR 88 Design Modifications and Inspection or Maintenance Program Changes

(g) Before December 16, 2008, modify the airplane and revise the inspection or maintenance program to incorporate instructions for maintenance and inspection of the fuel tank system, using information developed in accordance with the applicable provisions of Special Federal Aviation Regulation No. 88 (SFAR 88), Amendment 21–78, and subsequent Amendments 21–82 and 21–83, which are included in a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001).

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York Aircraft Certification Office, FAA, ATTN: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on June 12, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–16667 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0529; Airspace Docket No. 08–AWP–6]

Proposed Establishment and Revocation of Class E Airspace; Lake Havasu, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at the new Lake Havasu City Airport, Lake Havasu, AZ. Additional controlled airspace is necessary to accommodate aircraft using VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Lake Havasu City Airport, Lake Havasu, AZ. This action also would revoke Class E airspace at the old Lake Havasu Airport, Lake Havasu, AZ, as that airport has been abandoned. The FAA is proposing this action to enhance the safety and management of aircraft operations at Lake Havasu City Airport, Lake Havasu, AZ.

DATES: Comments must be received on or before September 4, 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–2008–0529; Airspace Docket No. 08–AWP–6, 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 2008–0529 and Airspace Docket No. 08–AWP–6) 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–2008–0529 and Airspace Docket No. 08–AWP–6''. 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 the new Lake Havasu City Airport, Lake Havasu, AZ. The Class E airspace area for the original Lake Havasu Airport, Lake Havasu, AZ, is being revoked, as the airport has been abandoned. Controlled airspace is necessary to accommodate aircraft using VOR/DME (GPS) SIAP at Lake Havasu City Airport, Lake Havasu, AZ.

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 controlled airspace at the new Lake Havasu City Airport, Lake Havasu, AZ and removes airspace at the old Lake Havasu Airport, Lake Havasu, AZ.

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.

* * * * *

AWP AZ E5 Lake Havasu, AZ [Revoked]

* * * * *

AWP AZ E5 Lake Havasu, AZ [New]

Lake Havasu City, AZ
(Lat. 34°34′16″ N., long. 114°21′30″ W.)
Chemehuevi Valley Airport, CA
(Lat. 34°31′44″ N., long. 114°25′56″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Lake Havasu City Airport, excluding that airspace with a 1.5-mile radius of Chemehuevi Valley Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°42′47″ N., long. 114°29′37″ W.; to lat. 34°42′47″ N., long. 114°12′00″ W.; to lat. 34°23′54″ N., long. 114°12′00″ W.; to lat. 34°18′13″ N., long. 114°32′12″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on July 9, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Area.

[FR Doc. E8–16520 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 455

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comments on its Used Motor Vehicle Trade Regulation Rule (''Used Car Rule'' or ''Rule''). The Commission is soliciting the comments as part of the FTC's systematic review of all current Commission regulations and guides.

DATES: Written comments relating to the Used Car Rule must be received by September 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments relating to the Used Car Rule review. Comments should refer to ''Used Car Rule Regulatory Review, Matter No. P087604'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex H), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at: (*https://secure.commentworks.com/ftc-UsedCarRuleReview*). To ensure that the Commission considers an electronic comment, you must file it on the web-based form. You may also visit *http://www.regulations.gov* to read this notice, and may file an electronic comment through that Web site. The Commission will consider all comments that *www.regulations.gov* forwards to it.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and to use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. To read our policy on how we handle the information you submit - including routine uses permitted by the Privacy Act - please review the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, (312) 960-5615, Attorney, Midwest Region, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Used Car Rule in 1984 and the Rule became effective in 1985.[2] The Used Car Rule is intended primarily to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on a window sticker called the ''Buyers Guide'' that dealers are required to display on used cars. The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer's warranty and, if so, the basic terms, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty. The Rule additionally provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule requires Spanish language versions of the Buyers Guide when dealers conduct sales in Spanish.

The Rule also requires other disclosures that must be printed directly on the Buyers Guide, including:

(1) A suggestion that consumers ask the dealer if a pre-purchase inspection is permitted;

(2) A warning against reliance on spoken promises that are not confirmed in writing; and

(3) A list of fourteen major systems of a used motor vehicle and the major defects that may occur in these systems.

In 1995, as part of its periodic review, the Commission amended the Used Car Rule.[3] Specifically, the Commission amended the Rule by: (1) adopting several minor grammatical changes to the Spanish language version of the Buyers Guide; (2) permitting dealers to display a Buyers Guide anywhere on a used motor vehicle so long as the Buyers Guide is displayed prominently and both sides of it are readily readable; and (3) allowing dealers to obtain a consumer's signature on the Buyers Guide to acknowledge receipt.

The Rule provides for both English and Spanish Buyers Guides. In the past, Commission staff has advised dealers who conduct substantial numbers of sales in Spanish to display both English and Spanish Buyers Guides.[4] In response to questions from industry, the Commission is seeking comments on whether the Rule should be revised to permit dealers to use a single bilingual Buyers Guide. The Commission is also seeking proposals for the design of bilingual Buyers Guides.

The reverse side of the Buyers Guide contains a pre-printed list of fourteen major systems and the defects that may occur in those systems. That list has not been changed since the Used Car Rule was promulgated in 1984. The list was promulgated from the rulemaking proceeding and from information gleaned from prior versions of the Used Car Rule. The Commission is seeking comments on the value of the Buyers Guide's pre-printed list of major systems and defects and whether the list should be revised or eliminated.

The Commission is also seeking comments on how well the current method for disclosing unexpired manufacturer's warranties on the Buyers Guide is working. In connection with that inquiry, the Commission is seeking comments on a possible alternative Buyers Guide to aid in disclosing dealers' warranties, unexpired manufacturer's warranties, manufacturer's used car warranties, and used car warranties provided by third parties other than the manufacturer. Examples of Buyers Guides that incorporate a revised method for disclosing these various types of warranties are attached to this notice as Appendices A and B.

II. Regulatory Review of the Used Car Rule

The Commission reviews all of its rules and guides periodically to examine their efficacy, costs, and benefits; and to determine whether to retain, modify, or rescind them. This notice commences the Commission's review of the Used Car Rule.

A. General Areas of Interest for FTC Review

As part of its review, the Commission is seeking comment on a number of general issues, including the continuing need for the Used Car Rule and its economic impact, the effect of the Rule on deception in the used car market, and the interaction of the Rule with other regulations. Since the Commission's last revisions of the Rule in 1995, new used car products, such as certified used car warranties, have become increasingly popular. The Commission believes that this review is important to ensure that the Rule is appropriately responsive to any changes in the marketplace.

B. Specific Areas of Interest for FTC Review

Since the last revisions to the Rule in 1995, the Commission occasionally has received informal input regarding the efficacy of the Rule and requests for clarification about the Rule's application. Some of the questions included in this notice, therefore, address specific issues. By including these issues, the Commission intends to facilitate comment, and the inclusion or exclusion of any issue is no indication of the Commission's intent to make any specific modifications to the Rule.

III. Issues for Comment

The Commission requests written comment on any or all of the following questions. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

A. General Issues

(1) Is there a continuing need for the Rule? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should be made to the Rule to increase its benefits to consumers?

[2] 49 FR 45,692 (November 19, 1984).

[3] 60 FR 62,195 (December 5, 1995).

[4] *See* Staff Compliance Guidelines, 53 FR 17,660, 17,664, 17,667 (Illustration 3.10) (May 17, 1988). The Staff Compliance Guidelines and other information about the Used Car Rule are available online from the Commission's Web site at: *www.ftc.gov*.

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs the Rule imposes on businesses, and in particular on small businesses?

(c) How would these modifications affect the benefits to consumers?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the benefits provided by the Rule?

(7) How have the 1995 amendments to the Rule affected purchasers of used motor vehicles? How have the 1995 amendments to the Rule affected used motor vehicle dealers? Please provide any evidence that has become available since 1995 concerning the costs, benefits, and effectiveness of the Rule. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(9) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and in particular to small businesses?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs the Rule impose on businesses, and in particular on small businesses?

(c) How would these modifications affect the benefits to consumers?

(10) What significant costs, including costs of compliance, has the Rule imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs?

(11) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and in particular on small businesses?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the benefits provided by the Rule?

(12) What evidence is available concerning the degree of industry compliance with the Rule? To what extent has there been a reduction in deceptive oral representations and unfair omissions made by used car dealers concerning warranty coverage since the Rule was issued? Please provide any supporting evidence. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(13) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

(14) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

B. Specific Issues

(1) Should the Used Car Rule be modified to permit used motor vehicle dealers the option of using a Buyers Guide that combines both the English and Spanish language versions of the Buyers Guide into a single bilingual document? If not, why not? If so, why? If so, how should bilingual Buyers Guides be designed and formatted? How should bilingual Buyers Guides be designed and formatted to minimize consumer confusion?

(a) If recommending that bilingual Buyers Guides should be permitted, provide as much detail as possible about the form that the bilingual Buyers Guides should take. Provide examples of bilingual Buyers Guides for use in states that permit ''as is'' sales (*i.e.*, sales in which implied warranties are disclaimed) and states that prohibit ''as is'' sales (*i.e.*, ''Implied Warranties Only'' sales). Indicate the type styles, sizes, and format used in examples of bilingual Buyers Guides that are submitted.

(b) What benefits, if any, would bilingual Buyers Guides provide consumers? What evidence supports the asserted benefits?

(c) What burdens, if any, would bilingual Buyers Guides impose on consumers? What evidence supports the asserted burdens?

(d) What benefits, if any, would bilingual Buyers Guides provide businesses, and in particular small businesses? What evidence supports the asserted benefits?

(e) What burdens, if any, would bilingual Buyers Guides impose on businesses, and in particular small businesses? What evidence supports the asserted burdens?

(f) Question 8 below discusses possible alternative Buyers Guides intended to facilitate the disclosure of manufacturer's and other third-party warranties. How would your answers to the preceding questions about bilingual Buyers Guides change if the Commission adopted a revised Buyers Guide as described in Question 8?

(2) Should the translation of the Buyers Guide into Spanish be revised as described below? If so, why? If not, why not?

(a) Should the term ''dealer'' be translated into Spanish as ''concesionario,'' instead of ''distribuidor'' and ''vendedor?''

(b) Should the term ''regardless of'' in the statement below the AS IS - NO WARRANTY box on the front of the Buyers Guide be translated into Spanish as ''independientemente de'' instead of ''sean cuales sean?''

(c) Should the following revisions be made to the Spanish translation of terms used in the list of major defects in automobile systems on the reverse side of the Buyers Guide?

(i) Should the term ''Frame-cracks'' in the **Frame & Body** section be translated as ''Grietas en el chasis,'' instead of ''Chasis-grietas?''

(ii) Should the term ''Cooling System'' in the **Cooling System** section be translated as ''Sistema de enfriamiento,'' instead of ''Sistema de refrigeraci''

(iii) Should the term ''Air conditioner'' in the **Inoperable** Accessories section be translated as ''Aire acondicionado,'' instead of ''Acondicionador de aire?''

(iv) Should the term ''Defroster'' in the **Inoperable Accessories** section be translated as ''Desempaador,'' instead of ''Descarchador?''

(v) Should the terms ''Not enough pedal reserve'' in the **Brake System** section be translated as ''Distancia insuficiente del pedal,'' instead of ''Juego insuficiente en el pedal?''

(3) What purposes, if any, does the list of systems and major defects that may occur in a used motor vehicle on the reverse side of the Buyers Guide serve?

(a) What benefits does the list provide to consumers?

(b) What burdens does the list impose on consumers?

(c) What benefits does the list provide to businesses, and in particular to small businesses?

(d) What burdens does the list impose on businesses, and in particular on small businesses?

(e) Should the list be retained? Why or why not?

(f) Should the list be modified? If so, why, and how? If not, why not?

(4) The Rule permits dealers who opt to disclose an unexpired manufacturer's warranty to add the following statement to the Buyers Guide below the FULL/LIMITED WARRANTY boxes in the SYSTEMS COVERED/DURATION section:

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.[5]

Separately and beneath that statement, in states that permit ''as is'' sales, dealers may add:

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacture's warranty.[6]

(a) What benefits, if any, does the method permitted by the Rule for disclosing unexpired manufacturer's warranties provide consumers?

(b) What burdens does the method permitted by the Rule for disclosing unexpired manufacturer's warranties impose on consumers?

(c) What benefits does the method for disclosing unexpired manufacturer's warranties permitted by the Rule provide businesses, and in particular small businesses?

(d) What burdens does the method for disclosing unexpired manufacturer's warranties permitted by the Rule provide businesses, and in particular small businesses?

(e) Should the current method permitted by the Rule for disclosing unexpired manufacturer's warranties be modified? If so, why, and how? If not, why not?

(f) Should the Rule provide an option to use a similar method for disclosing other warranties that are included in the price of the used vehicle, such as manufacturer's certified used car warranties and warranties provided by other third parties? If so, why, and how? If not, why not?

(5) Should the optional statement provided by the Rule to indicate that a manufacturer's warranty applies be revised to alert consumers to check the warranty booklet for the expiration date of the manufacturer's warranty by stating: ''Consult the manufacturer's warranty booklet for details as to warranty coverage, expiration, service location, etc?'' Why or why not?

(6) Should the Rule require dealers to indicate whether a manufacturer's warranty applies and provide information about the scope of that coverage? Why or why not? Should disclosure of manufacturer's warranties be optional as the Rule currently provides? Why or why not?

(7) Is checking the AS IS - NO WARRANTY box to indicate that the dealer is not obligated to perform warranty service clear and understandable to consumers? Why or why not? Does checking the AS IS - NO WARRANTY box confuse consumers about whether other warranty or service coverage, such as a manufacturer's warranty, applies? Why or why not? How could the Buyers Guide be redesigned to prevent consumer confusion about the meaning of the ''as is'' disclosure?

(8) Examples of revised Buyers Guides that provide a different method to disclose manufacturer's warranties and third-party warranties that are included in the price of the used car are attached as Appendices A and B. Appendix A is designed for use in states that permit dealers to sell used cars ''as is,'' *i.e.*, without any warranty from the dealer. Appendix B is designed for use in states that prohibit ''as is'' sales.

The Buyers Guide attached as Appendix A states:

☐ ''AS IS'' - NO DEALER WARRANTY THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

If a dealer chooses to use a Buyers Guide like Appendix A and does not offer its own warranty, the dealer would check the box to indicate that the car is being offered ''AS IS''- NO DEALER WARRANTY.

If state law limits or prohibits ''as is'' sales of vehicles or the dealer chooses to offer the vehicle with implied warranties only when offering a car for sale in a state that permits ''as is'' sales, the following should be substituted for ''AS IS'' - NO DEALER WARRANTY, and its accompanying language:

☐ IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, State law ''implied warranties'' may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

Appendix B is a Buyers Guide that uses the above disclosure to indicate that the dealer is offering implied warranties only.

If a dealer chooses to use a Buyers Guide like Appendix A or B and the dealership provides its own used car warranty, the dealer would check the DEALER WARRANTY box, indicate whether the warranty is full or limited, and identify the percentage of labor and parts that the dealer will pay for repairs:

☐ DEALER WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _ % of the labor and __ % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, ''implied warranties'' may give you even more rights.

Immediately beneath this section, the dealer would indicate the Systems Covered and the Duration of coverage for the identified systems:

SYSTEMS COVERED: DURATION:

If the dealer does not provide its own warranty and state law permits the dealer to sell used cars ''as is,'' in the space provided for the SYSTEMS COVERED/DURATION, the dealer may fill in (or pre-print or use a rubber stamp) the following statement: ''The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty, manufacturer's used car warranty, or other used car warranty indicated below.''

The Buyers Guide would have additional boxes below the SYSTEMS COVERED/DURATION section where the dealer could indicate whether the dealer is offering a used car with a manufacturer's warranty or other third-party warranty. If a dealer chooses to disclose manufacturer's warranties and third-party warranties using Appendix A or B, dealers would check the appropriate boxes to indicate the types of warranties that are provided as part of the sales price of the car.

☐ NON-DEALER WARRANTIES

☐ MANUFACTURER'S WARRANTY STILL APPLIES.

The manufacturer's original warranty has not expired on the vehicle.

☐ MANUFACTURER'S USED CAR WARRANTY APPLIES.

☐ OTHER USED CAR WARRANTY APPLIES.

Consult the warranty booklet for details as to warranty contract coverage, expiration, service location, etc.

☐ NO INFORMATION PROVIDED. The dealer provides no information about other warranties that may apply.

The Rule's SERVICE CONTRACT box and corresponding explanation that a service contract is available would appear below this statement separated by a line to distinguish service contract availability from warranty coverage:

☐ SERVICE CONTRACT. A service contract is available at an extra charge

[5] 16 C.F.R. § 455.2(b)(2)(v).

[6] Staff Compliance Guidelines, 53 Fed. Reg. 17,660 at 17,663 (May 17, 1988).

on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within ninety days of sale, state law ''implied warranties'' may give you additional rights.

(a) Should the Rule be revised to permit dealers to disclose unexpired manufacturer's warranties, manufacturer's used car warranties, and other used car warranties as shown in Appendices A and B?

(b) What benefits, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B provide to consumers?

(c) What burdens, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B impose on consumers?

(d) What benefits, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B provide to businesses, and in particular to small businesses?

(e) What burdens, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B impose on businesses, and in particular on small businesses?

(f) What alternatives, if any, should be considered? Why? If no alternatives should be considered, why not?

(g) Does stating ''AS IS'' - NO DEALER WARRANTY (*See* Appendix A) instead of AS IS - NO WARRANTY make the Buyers Guide more clear and understandable to consumers? Why or why not?

(h) Is checking the box marked ''AS IS'' - NO DEALER WARRANTY to indicate that a dealer does not offer its own warranty clear and understandable to consumers when a dealer also checks one or more of the boxes indicating that a NON-DEALER WARRANTY from someone other than the dealer applies? Why or why not?

(i) Does stating, ''THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS'' (*See* Appendix A), instead of ''YOU WILL PAY ALL COSTS FOR ANY REPAIRS'' to explain ''AS IS'' - NO DEALER WARRANTY make the Buyers Guide in Appendix A more clear and understandable to consumers? Why or why not?

(j) Does adding the statement ''FROM THE DEALER'' help show that the boxes marked IMPLIED WARRANTIES ONLY and DEALER WARRANTY apply only to warranties that may, or may not, be offered by the dealer? If so, why? If not, why not? If not, how could the format and/or wording be improved?

(k) Does eliminating the lines for text in the SYSTEMS COVERED/DURATION section of the Buyers Guide, as shown in Appendices A and B, make it easier or more difficult to disclose each system covered and the duration of coverage for each system? Why?

(l) If the Rule is revised to permit dealers to use the Buyers Guides in Appendices A and B, what combination of type size, paper size, and formatting, particularly the amount of space allotted for the SYSTEMS COVERED/DURATION section, should be used to accommodate the additional text and other information in the Appendices, while assuring that the Buyers Guides are clear and understandable to consumers? In particular:

(i) Should the Rule be revised to specify smaller or larger type sizes for Buyers Guides like those in Appendices A and B than currently prescribed by the Rule? Why, or why not? If so, specify the type sizes.

(ii) Instead of, or in combination with, changes in type sizes, should the Rule be revised to specify that Buyers Guides like those in Appendices A and B be printed on paper larger than the currently prescribed 11'' x 7 1/4'' minimum? Why or why not? If so, specify minimum paper sizes, and identify type sizes if in combination with a recommended type size.

(iii) Instead of, or in combination with changes in type size and paper size, should the space allotted for dealers to disclose warranty coverage and duration in the SYSTEMS COVERED/DURATION section of the Buyers Guide be increased or decreased? Why, or why not? How do changes in type size and paper size affect your answer?

(9) Does the statement ''IMPLIED WARRANTIES ONLY'' and accompanying text clearly disclose that the dealer offers no express warranty? If not, how could the disclosure be made clearer?

(10) Should the Rule's type style, size, and format requirements for Buyers Guides be revised to accommodate current word processing programs? If so, why, and how? If not, why not?

(11) What other changes to the format of the Buyers Guide should be considered to increase its benefits? What effect would such changes have on the costs or burdens imposed by the Rule? What empirical or other evidence supports opinions that such changes would or would not increase costs or burdens?

(12) What other changes to the format of the Buyers Guide should be considered to reduce compliance costs or burdens? Would such changes have any detrimental effect on the benefits provided by the Rule? What empirical or other evidence supports opinions about whether such changes would have a detrimental effect on benefits?

List of Subjects in 16 CFR Part 455

Motor Vehicles, Trade Practices.

Authority: 15 U.S.C. 41-58, 15 U.S.C. 2309.

By direction of the Commission.

Donald S. Clark

Secretary

APPENDIX A

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ **"AS IS" - NO DEALER WARRANTY**

THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

- -

☐ **DEALER WARRANTY**

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED: **DURATION:**

☐ **NON-DEALER WARRANTIES**

☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle.

☐ MANUFACTURER'S USED CAR WARRANTY APPLIES.

☐ OTHER USED CAR WARRANTY APPLIES.

Consult the warranty booklet for details as to warranty coverage, expiration, service location, etc.

☐ NO INFORMATION PROVIDED. The dealer provides no information about other warranties that may apply.

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION. ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dog tracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage. excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked of damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX B

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

FROM THE DEALER:

☐ IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ DEALER WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED: **DURATION:**

☐ NON-DEALER WARRANTIES

☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle.

☐ MANUFACTURER'S USED CAR WARRANTY APPLIES.

☐ OTHER USED CAR WARRANTY APPLIES.

Consult the warranty booklet for details as to warranty coverage, expiration, service location, etc.

☐ NO INFORMATION PROVIDED. The dealer provides no information about other warranties that may apply.

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dog tracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked of damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

[FR Doc. E8–16634 Filed 7–18–08: 8:45 am]
BILLING CODE 6750–01–S]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301

[REG–129243–07]

RIN 1545–BG83

Tax Return Preparer Penalties Under Sections 6694 and 6695; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–129243–07) that was published in the **Federal Register** on Tuesday, June 17, 2008 (73 FR 34560) implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code and related provisions under sections 6060, 6107, 6109, 6696 and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007. The proposed regulations affect tax return preparers and provide guidance regarding the amended provisions.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 and Matthew S. Cooper, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6107, 6694, 6696, and 7701 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–129243–07) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–129243–07), which was the subject of FR Doc. E8–12898, is corrected as follows:

1. On page 34563, column 2, in the preamble, under the paragraph heading ''*Furnishing of Copy of the Tax Return*'', first paragraph of the column, line 2, the language ''Single Filers and Joint Filers With No'' is corrected to read ''Single and Joint Filers With No''.

2. On page 34567, column 1, in the preamble, under the paragraph heading ''*Definition of Tax Return Preparer*'', first paragraph of the column, line 3, the language ''under proposed § 301.7701–15(b)(2) and'' is corrected to read ''under proposed §§ 301.7701–15(b)(2) and''.

§ 1.6694–1 [Corrected]

3. On page 34572, column 1, § 1.6694–1(e)(2), line 6, the language ''would be sustained on its merits and'' is corrected to read ''be sustained on its merits and''.

§ 26.6694–1 [Corrected]

4. On page 34583, column 3, § 26.6694–1(a), line 5, the language ''see § 1.66994–1 of this chapter.'' is corrected to read ''see § 1.6694–1 of this chapter.''.

§ 41.6107–1 [Corrected]

5. On page 34586, column 3, § 41.6107–1(a), line 3, the language ''or claim for refund of excise tax section'' is corrected to read ''or claim for refund of excise tax under section''.

§ 156.6107–1 [Corrected]

6. On page 34593, column 1, § 156.6107–1(a), line 3, the language ''or claim for refund of tax under Section'' is corrected to read ''or claim for refund of tax under section''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–16176 Filed 7–18–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2008–0419; FRL–8695–2]

RIN 2060–A096

Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reductions Credits Outside Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its Phase 2 implementation rule for the 8-hour ozone national ambient air quality standard (NAAQS or standard) to address the U.S. Circuit Court of Appeals for the District of Columbia Circuit's vacatur and remand of this rule. Specifically, this proposal addresses the vacatur and remand of a provision that allowed credit toward reasonable further progress (RFP) for the 8-hour standard from emission reductions outside the nonattainment area.

DATES: Comments must be received on or before August 20, 2008.

If anyone contacts us requesting a public hearing by July 31, 2008, we will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0419 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-*and-r-docket@epa.gov.*
- *Fax Number:* (202) 566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0419, Environmental Protection Agency, 1301 Constitution Ave., NW., Mail Code 2822T, Washington, DC 20460. Please include two copies if possible.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0419, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0419. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in *www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 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.

FOR FURTHER INFORMATION CONTACT: For further information on the this proposal contact: Ms. Denise Gerth, Office of Air Quality Planning and Standards (C539–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5550 or by e-mail at *gerth.denise@epa.gov,* fax number (919) 541–0824; or Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected directly by the subject rule for this action include state, local, and Tribal governments. Entities potentially affected indirectly by the subject rule include owners and operators of sources of emissions (volatile organic compounds (VOCs) and nitrogen oxides (NO_X) that contribute to ground-level ozone concentrations.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

A copy of this document and other related information is available from the docket.

D. What Information Should I Know About the Public Hearing?

If requested, EPA will hold a public hearing only if a party notifies EPA by July 31, 2008, expressing its interest in presenting oral testimony on issues addressed in this notice. Any person may request a hearing by calling Mrs. Pamela Long at (919) 541–0641 before 5 p.m. by July 31, 2008. Any person who plans to attend the hearing should also contact Mrs. Pamela Long at (919) 541–0641 to learn if a hearing will be held.

If a public hearing is held on this notice, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please contact Mrs. Pamela Long at *long.pam@epa* or by telephone at (919) 541–0641 for information and updates concerning the public hearing.

If held, the public hearing will begin at 10 a.m. and will end one hour after the last registered speaker has spoken. The hearing will be limited to the subject matter of this document. Oral testimony will be limited to five minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD–ROM) or in paper copy. The list of speakers can be obtained from Mrs. Pamela Long. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in this notice. The EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

E. How Is This Notice Organized?

The information presented in this notice is organized as follows:

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
C. Where Can I Get a Copy of This Document and Other Related Information?
D. What Information Should I Know About the Public Hearing?
E. How Is This Notice Organized?
II. What Is the Background for This Proposal?
A. Final Phase 2 Ozone Implementation Rule (40 CFR parts 51, 52, and 80)
B. Court's Vacatur and Remand of Provision Allowing Credit for Emissions Reductions Outside a Nonattainment Area for Purposes of RFP for the 8-Hour Ozone NAAQS
III. This Action
A. Revision of 8-Hour Ozone RFP Provision for Emission Reduction Credit From Outside a Nonattainment Area
1. Original Regulatory Interpretation
2. Effect of Court Ruling
3. This Proposed Regulatory Interpretation for RFP
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)

II. What Is the Background for This Proposal?

A. Final Phase 2 Ozone Implementation Rule (40 CFR Parts 51, 52, and 80)

On November 29, 2005 (70 FR 71612), EPA published the Phase 2 final rule that addressed, among other things, the following control and planning obligations as they apply to areas designated nonattainment for the 8-hour ozone NAAQS: Reasonably available control technology and measures (RACT and RACM), RFP, modeling and attainment demonstrations and new source review (NSR). In the Phase 1 Rule, RFP was defined in section 51.900(p) as meaning for the purposes of the 8-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA. In section 51.900(q), rate of progress (ROP) was defined as meaning for purposes of the 1-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA (see 69 FR 23997).

The Phase 2 Rule to implement the 8-hour NAAQS set forth an interpretation that certain emission reductions from outside a nonattainment area could be credited toward the 8-hour ozone RFP requirement. The rule stated that credit could be taken for VOC and NO_X emission reductions within 100 kilometers (km) and 200 km respectively outside the nonattainment area (70 FR 71647; November 29, 2005). In addition, if a regional NO_X control strategy were in place in the state, reductions could be taken from within the state (beyond 200 km). In all cases, areas had to include a demonstration that the emissions from outside the nonattainment had an impact on air quality levels within the nonattainment area.

This interpretation was similar to the policy EPA had established under the 1-hour ozone standard.[1] That policy provided additional flexibility for a nonattainment area as it attempted to meet its annual ROP emission reductions. This flexibility expanded the geographic size of the area from which states could obtain emission reductions to meet their annual average 3 percent per year ROP requirement. The policy required that pre-control emissions from a source outside the nonattainment area that would provide credit had to be included in the baseline ROP emissions and target ROP reduction calculation. However, emissions from other sources in the area outside the nonattainment area did not have to be included in the baseline if the nonattainment area was not taking credit for emissions reductions for purposes of ROP.

B. Court's Vacatur and Remand of Provision Allowing Credit for Emissions Reductions Outside a Nonattainment Area for Purposes of RFP for the 8-Hour Ozone NAAQS

On January 27, 2007, the Natural Resources Defense Council (NRDC) filed a petition for review of EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005) in the Court of Appeals for the District of Columbia's Circuit. NRDC challenged several aspects of the Phase 2 rule including challenges to EPA's implementation of statutory provisions concerning RFP. In its challenge to EPA's implementation of the RFP provisions, NRDC stated that allowing certain NO_X and VOC emissions reductions achieved at sources outside a nonattainment area to be credited towards that area's RFP State Implementation Plan (SIP) requirements is both unlawful and arbitrary. NRDC specifically argued, in part, that the rule is arbitrary because it allowed the nonattainment area to claim credit for emission reductions from selected outside sources without also adding emissions from other outside sources to the RFP baseline, even where those other sources impact air quality in the nonattainment area.

Following the conclusion of briefing in this case, EPA published a final rule implementing the NAAQS for fine particulate matter (the ''$PM_{2.5}$ Implementation Rule''). *See* 72 FR 20586 (April 25, 2007). In the $PM_{2.5}$ Implementation Rule, EPA adopted a different approach for crediting ''outside'' reductions. The $PM_{2.5}$ Rule allows states to take credit for ''outside'' reductions of NO_X and sulfur dioxide (SO_2) emissions up to 200 kilometers from the nonattainment area (and potentially for VOC or ammonia if the state has provided a technical demonstration indicating that such pollutant emissions significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area) provided it meets three conditions: (1) The state plan must demonstrate that emissions from the ''outside'' source area contribute to $PM_{2.5}$ concentrations in the nonattainment area; (2) a SIP taking RFP credit for emissions reductions achieved in ''outside'' areas includes all sources from that area in its baseline emissions inventory; and (3) the area ''outside'' the nonattainment area from which the state seeks credits only can include portions of the state or states in which the nonattainment area is located, even if the other states may be within 200 km of the nonattainment area.[2] *See* 72 FR at 20636–38. One objective of this policy was to reflect the net emission

[1] The 1-hour ozone policy was established in a memorandum ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS,'' December 29, 1997.

[2] On July 26, 2007, Earthjustice challenged, among other things, the suspension of requirements for attainment plans, progress plans (including RFP plans), contingency measures and certain other plans and measures where EPA determines that an area is meeting the $PM_{2.5}$ standard. The provision in the $PM_{2.5}$ implementation rule that allows States to take credit for reductions from outside the nonattainment area for the purposes of meeting RFP requirements has been challenged in litigation filed by Earthjustice on behalf of the American Lung Association, Medical Advocates for Healthy Air, the Natural Resources Defense Council, and the Sierra Club. *See National Cattlemen's Beef Association* v. *Environmental Protection Agency,* No. 07–1227.

reductions in the ''outside'' area that could affect the nonattainment area rather than crediting only reductions from selected sources. Another objective was to ensure that credit for ''outside'' reductions is achieved due to emission reduction programs implemented by the states having a responsibility to take actions to bring that specific nonattainment area into attainment.

Following publication of the $PM_{2.5}$ Implementation rule which significantly modified the interpretation regarding credits for emissions outside the nonattainment area, EPA requested a partial voluntary remand from the Court on July 17, 2007, to re-evaluate and consider whether to revise the Phase 2 Rule RFP interpretation for consistency with analogous provisions in the $PM_{2.5}$ Implementation rule. In response to EPA's motion for a partial voluntary remand of the RFP policy, NRDC asked the Court to also vacate, *i.e.*, to nullify this provision. On November 2, 2007, the Court issued an order that vacated and remanded the portion of the Phase 2 Rule that permitted credit for reductions of VOC and NO_X from outside the nonattainment areas.

In the meantime, to assist in making decisions regarding RFP in SIP submissions, EPA issued a memorandum on October 11, 2007 advising that, among other things, the Regional Offices not approve ROP/RFP SIPs that obtained VOC or NO_X reductions from outside the nonattainment area until the anticipated new rulemaking was finalized.[3]

III. This Action

A. Revision of 8-Hour Ozone RFP Provision for Emission Reduction Credit From Outside a Nonattainment Area

1. Original Regulatory Interpretation

As noted above under the Background section, EPA's interpretation in the Phase 2 Rule stated that emissions from a source outside the nonattainment area that would provide credit had to be included in the baseline for calculating the percent reduction needed. However, emissions from other sources outside the nonattainment area did not have to be included in the baseline if they did not provide RFP credit for the nonattainment area. The Phase 2 Rule also clarified that in relying on this provision, states should ensure that the reductions meet the standard tests of creditability (permanent, enforceable, surplus, and quantifiable) and are shown to be beneficial toward reducing ozone in the nonattainment area.

2. Effect of Court Ruling

The U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded that portion of the Phase 2 Rule which provided credit under the 8-hour ozone RFP requirement for VOC and NO_X emission reductions from outside a nonattainment area.

3. This Proposed Regulatory Interpretation for RFP

In response to the Court's vacatur and remand, this action proposes to revise the earlier interpretation to be consistent with the analogous provisions in the $PM_{2.5}$ implementation rule (72 FR 20636) such that if the state justifies consideration of precursor emissions for an area outside the nonattainment area, EPA will expect state RFP assessments to reflect emissions changes from all sources in this area. The state may no longer include only selected sources from an area providing emission reductions in the calculation of either (a) the RFP baseline from which to calculate the percent reduction needed for RFP or (b) the reductions obtained that would be credited toward the RFP requirement and the analysis of whether the reductions from areas outside the nonattainment area would contribute to decreases in ozone levels in the nonattainment area. Also, the justification for considering emissions outside the nonattainment area shall include justification of the state's selection of the area used in the RFP plan for each pollutant. In the $PM_{2.5}$ rule, EPA received comments objecting to the possibility that RFP inventories for areas outside the nonattainment area could include selected sources expecting substantial emission reductions while excluding other nearby sources expecting emissions increases. Consequently, EPA changed its approach for considering regional emissions. The $PM_{2.5}$ rules state that if a state justifies consideration of precursor emissions for an area outside the nonattainment area, EPA expects state RFP assessments to reflect emissions changes from all sources in the area. The state cannot include only selected sources providing emission reductions in the analysis. The inventories for 2002, 2009, 2012 (where applicable) and the attainment year would all reflect the same source domain, *i.e.*, the same set of sources except for the addition of any known new sources or removal of known, creditably and permanently shut down sources. EPA is proposing to adopt the same approach that was used in the $PM_{2.5}$ implementation rule in this revised interpretation for purposes of implementing the 8-hour ozone NAAQS.

In cases where the state justifies consideration of emissions of one or both of the ozone precursors (VOC and NO_X) from outside the nonattainment area, EPA proposes that they must provide separate information regarding on-road mobile source emissions within the nonattainment area for transportation conformity purposes.[4] The EPA's transportation conformity regulations (40 CFR 93.102(b)) only require conformity determinations in nonattainment and maintenance areas, and these regulations rely on SIP on-road motor vehicle emission budgets that address on-road emissions within the boundary of the designated nonattainment area. For this reason, if the state addresses emissions outside the nonattainment area for an ozone precursor, the on-road mobile source component of the RFP inventory will not satisfy the requirements for establishing a SIP budget for transportation conformity purposes. In such a case, the state must supplement the RFP inventory with an inventory of on-road mobile source emissions to be used to establish a motor vehicle emissions budget for transportation conformity purposes. *This inventory must:* (1) Address on-road motor vehicle emissions that occur only within the designated nonattainment area, (2) provide for the same milestone year or years as the RFP demonstration, and (3) satisfy other applicable requirements of the transportation conformity regulations (40 CFR part 93). As long as the state provides this separate emissions budget, EPA believes that this approach will optimally address both the RFP and the transportation conformity provisions of the Clean Air Act (CAA).

In addition, for consistency with the approach taken in the $PM_{2.5}$ rule, this proposal would restrict the use of emission reductions for RFP credit to areas within the state, except in the case of multi-state nonattainment areas, and only then would allow RFP reductions from outside the state to be credited from outside the nonattainment area if the states involved develop and submit a coordinated RFP plan. EPA would expect states with multi-state nonattainment areas to consult with other involved states, to formulate a list

[3] ''Partial Voluntary Remand Sought in the Ozone Phase 2 Rule Concerning Rate of Progress (ROP) Reductions Obtained From Outside a Nonattainment Area'' Memorandum of October 11, 2007.

[4] Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, programs, and highway and transit projects are consistent with the purpose of the SIP.

of the measures that they will adopt and the measures that the other state(s) will adopt, and then to adopt their list of measures under the assumption that the other state(s) will adopt their listed measures. Each state would be responsible for adopting and thereby providing for enforcement of its list of measures, and then that state and ultimately EPA (at such time as the plan is approved) would be responsible for assuring compliance with the SIP requirements (72 FR 20640).

IV. 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 not significant. Accordingly, this action is not subject to the Office of Management and Budget for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The reason for this is that the CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements; thus there is no information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 50 and 51 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0594. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies 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 impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) a 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. This proposed rule will not impose any requirements on small entities. Rather this proposal interprets the RFP requirements under the SIP for states to submit RFP plans in order to attain the ozone NAAQS. 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 of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final regulations with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA regulations 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 to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the regulation. 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 regulations an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this revision 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. Thus, this proposed revision is not subject to the requirements of section 202 and 205 of the UMRA. The CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements. However, even if this interpretation did establish an independent requirement for states to submit SIPs, it is questionable whether such a requirement would constitute a Federal mandate in any case. The obligation for a state to submit a SIP that arises out of section 110 and section 172 (part D) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 21(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 21(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

The EPA has determined that this proposal contains merely an interpretation of regulatory requirements and no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments because these regulations affect Federal agencies only.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications.'' Policies that have ''Federalism implications'' 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.''

This action 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. This proposal, if made final, would address the Court's vacatur and remand of a portion of the Phase 2 implementation rule for the 8-hour standard, namely an interpretation that allowed credit toward RFP for the 8-hour standard from emission reductions outside the nonattainment area. In addressing the vacatur and remand, this proposal merely explains the requirements for RFP and does not impose any additional requirements. Thus, Executive Order 13132 does not apply to this proposal.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

This proposal does not have Tribal implications as specified in Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to develop a SIP under this proposal. Furthermore, this proposal does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Because these proposed regulations revisions do not have Tribal implications, Executive Order 13175 does not apply. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposal addresses whether a SIP will adequately and timely achieve reasonable further progress to attain and maintain the NAAQS and meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to ozone or its precursors.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposal does not involve technical standards. Therefore EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases 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. The reason for this is that the CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

EPA has determined that this proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposal would, if promulgated, revise procedures for states to follow in developing SIPs to attain the NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low income populations and are designed to protect and enhance the health and safety of these and other populations.

List of Subjects 40 CFR Parts 50 and 51

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1).

Dated: July 14, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–16668 Filed 7–18–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, 225, and 252

RIN 0750–AF95

Defense Federal Acquisition Regulation Supplement; Restriction on Acquisition of Specialty Metals (DFARS Case 2008–D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address statutory restrictions on the acquisition of specialty metals not melted or produced in the United States. The proposed rule implements Section 842 of the National Defense Authorization Act for Fiscal Year 2007 and Sections 804 and 884 of the National Defense Authorization Act for Fiscal Year 2008.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 19, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D003, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2008–D003 in the subject line of the message.

Fax: 703–602–7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 842 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) added new provisions at 10 U.S.C. 2533b, to address requirements for the purchase of specialty metals from domestic sources. Section 804 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) made amendments to 10 U.S.C. 2533b with regard to its applicability to commercial items, electronic components, items containing minimal amounts of specialty metals, items necessary in the interest of national security, and items not available domestically in the required form. In addition, Section 884 of the National Defense Authorization Act for Fiscal Year 2008 added a requirement for DoD to publish a notice on the Federal Business Opportunities Web site before making a domestic nonavailability determination that would apply to more than one contract.

This proposed rule implements 10 U.S.C. 2533b and Section 884 of the National Defense Authorization Act for Fiscal Year 2008. The previous specialty metals policy is removed from DFARS 225.7002–1 through 225.7002–3; the new policy is added at 225.7003–1 through 225.7003–5; and the policy previously at 225.7003, addressing waiver of 10 U.S.C. 2534, is relocated to 225.7008 with no substantive change to content. The following is a discussion of the new specialty metals policy:

1. Restriction on Acquisition of Specialty Metals Not Melted or Produced in the United States

a. *Applicability to the six product categories*. Much of 10 U.S.C. 2533b reflects requirements already established in the DFARS. 10 U.S.C. 2533b(a)(1) is consistent with the existing DFARS requirement for flowdown of the specialty metals restriction to all subcontract tiers when acquiring aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition, for applicability to end items and components thereof. This restriction applies to acquisition of the item containing the specialty metal, not just the specialty metal. This restriction is implemented in the proposed rule at 225.7003–2(a).

b. *Applicability to specialty metals acquired as end items*.

The restriction at 10 U.S.C. 2533b(a)(2) applies to the purchase of specialty metal as an end item, whether purchased directly by DoD or by a DoD prime contractor. This restriction is implemented in the proposed rule at 225.7003–2(b).

2. Exceptions

a. *Continuation of existing exceptions*.

The types of acquisitions that were previously exempted from specialty metals restrictions, other than those by vessels in foreign waters, are also included in 10 U.S.C. 2533b and are implemented in the proposed rule at 225.7003–3(a). These exceptions are as follows:

- Acquisitions at or below the simplified acquisition threshold.
- Acquisitions outside the United States in support of combat operations.
- Acquisitions in support of contingency operations.
- Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2.
- Acquisitions of items specifically for commissary resale.

In addition, the proposed rule clarifies, at 225.7003–3(a)(6), that the specialty metals restriction does not apply to acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

b. *New or revised exceptions that may be used in tandem*. Exceptions that were added or revised by 10 U.S.C. 2533b and that can be used singly or together are implemented in the proposed rule at 225.7003–3(b).

(1) *Electronic components*. 10 U.S.C. 2533b, as added by Section 842 of Public Law 109–364, provided a new exception for commercially available electronic components whose specialty metal content is minimal in value compared to the overall value of the lowest level component produced that contains such specialty metal. As amended by Section 804 of Public Law 110–181, the electronic component exception in 10 U.S.C. 2533b has been broadened to cover all electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board, determines that the domestic availability of a particular electronic component is critical to national security.

(2) *Commercially Available Off-the-Shelf (COTS) items.* 10 U.S.C. 2533b contains new provisions applicable to COTS items. With certain exceptions, the statute does not apply to COTS items. However, the statute requires the reporting of information regarding the acquisition of noncommercial end items incorporating COTS items containing non-domestic specialty metals (fiscal years 2008 and 2009 only). The proposed rule requires contractors to provide this information for fiscal year 2009 in accordance with the clause at 252.225–70X4, Reporting of

Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items. In addition, the proposed rule contains an internal DoD reporting requirement with regard to the acquisition of COTS end items valued at $5 million or more per item, containing non-domestic specialty metals.

(3) *Fasteners.* 10 U.S.C. 2533b provides a new exception applicable to the acquisition of fasteners. The exception applies to fasteners that are commercial items purchased under a contract or subcontract, if the manufacturer of the fasteners certifies that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal for use in the production of such fasteners for sale to DoD and other customers, that is not less than 50 percent of the amount of specialty metal it will purchase to carry out the production of such fasteners.

(4) *Agreements with foreign governments.* 10 U.S.C. 2533b provides an exception applicable to acquisitions that further an agreement with a foreign government (i.e., a qualifying country). However, the exception does not apply to specialty metals acquired as an end item, which is a change from the current practice.

(5) *Domestic specialty metals nonavailable.* 10 U.S.C. 2533b revises the criteria for granting exceptions based on the nonavailability of domestic specialty metals. Such exceptions are permitted if domestic specialty metal cannot be acquired in a satisfactory quality, a sufficient quantity, and in the required form. 10 U.S.C. 2533b(m)(4) clarifies that ''in the required form'' does not apply to end items or their components at any tier; and that the term means ''in the form of mill product'' and in the grade appropriate for the production of a finished end item or a finished component assembled into an end item.

(i) 10 U.S.C. 2533b also establishes new requirements with regard to the approval of a domestic nonavailability determination (DNAD). At least 30 days prior to approval of a DNAD that would apply to more than one DoD contract, a notice of the intent to approve the DNAD must be published on the Federal Business Opportunities website. DoD must take into consideration all information submitted in response to the notice, and this information must be made publicly available, except for classified information and confidential business information.

(ii) The proposed rule eliminates the nonstatutory requirement for notification to the congressional defense committees at least 10 days before the award of a contract that relies on a determination of nonavailability for the acquisition of titanium or a product containing titanium. This requirement was at DFARS 225.7002–2(b)(4).

(6) *Minimal amounts of otherwise noncompliant specialty metal.* 10 U.S.C. 2533b provides a new exception applicable to otherwise noncompliant specialty metals that do not exceed 2 percent of the total weight of specialty metals in a delivered item. The proposed rule permits use of this exception in tandem with other exceptions listed in 225.7003–3(b); any foreign specialty metal not covered by any of the other exceptions may still be acceptable if it does not exceed 2 percent of the total weight of all specialty metals in the end item. This de minimis exception does not apply to the specialty metal in high performance magnets. The proposed rule places responsibility with the prime contractor for management of the content of specialty metals in the end item. In order to manage the de minimis exception, the contractor is authorized, but is not required, to flow down the substance of the specialty metals clause to subcontractors.

c. *Commercial derivative military articles.* 10 U.S.C. 2533b provides an alternative compliance method for commercial derivative military articles. This compliance method can be used if the Government determines that an item to be acquired is a commercial derivative military article, and the contractor certifies that the contractor and its subcontractors will enter into a contractual agreement or agreements to purchase a specified amount of domestically melted specialty metal for use, during the period of contract performance, in the production of the commercial derivative military article and the related commercial article.

d. *National security.* 10 U.S.C. 2533b permits DoD to accept the delivery of an end item containing noncompliant specialty metal if the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)) determines that acceptance of the item is necessary to the national security interests of the United States. In any case in which the USD (AT&L) makes such a determination, the USD (AT&L) is required to ensure that the contractor or subcontractor responsible for the noncompliance develops and implements an effective plan to ensure future compliance.

3. One-Time Waiver

Section 842(b) of the National Defense Authorization Act for Fiscal Year 2007 (not codified) established one-time waiver authority for contracts under which specialty metals were incorporated into items produced, manufactured, or assembled in the United States prior to October 17, 2006, and where final acceptance by the Government takes place after that date, but before September 30, 2010. DoD may grant such a waiver, provided the noncompliance was not knowing or willful. This policy is addressed in the proposed rule at 225.7003–4.

4. Definitions

a. *Specialty metal, alloy, and steel.* 10 U.S.C. 2533b contains a definition of ''specialty metal'' that is consistent with the one used in the clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals. The proposed rule makes minor changes to this definition to clarify its meaning, as there has been frequent misinterpretation of the definition with regard to nickel, iron-nickel, and cobalt alloys. Nickel alone is not a metal alloy. The meaning of the term ''other alloying metals'' within the definition depends on whether the alloy is nickel or iron-nickel, or cobalt. If the metal is a nickel alloy, the other alloying metal can be cobalt. If it is a cobalt alloy, the other alloying metal can be nickel.

In addition, this proposed rule clarifies the definitions of the terms ''alloy'' and ''steel,'' as used in the definition of specialty metal in the clauses at DFARS 252.225–70X1, Restriction on Acquisition of Specialty Metals, and 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals. DoD believes there is a need for clarification of the terms used within the definition of specialty metal, as numerous questions have arisen with regard to the meaning of these terms.

i. *Alloy.*

Basic to understanding the definition of specialty metals is an understanding of the term ''alloy.'' An alloy is a metal that consists of a mixture of a metal and one or more other elements. Often, these other elements will be metals. In other cases, a metal will be alloyed with a non-metal (such as carbon). However, the resultant material must retain its metallic properties (e.g., high electrical conductivity, luster, and malleability). If a metal and a nonmetal form a salt, or if a metal and oxygen form an oxide, those are not alloys.

The proposed rule defines ''alloy'' as a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements. For alloys named by a single metallic element (e.g., ''titanium alloy''),

the term means that the alloy contains 50 percent or more of the named metal (by mass). If two metals are specified in the name (e.g., nickel-iron alloy), those are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

DoD considered whether to define a particular alloy based on ''more than 50 percent,'' or based on ''predominance.'' If there were multiple elements in an alloy, the ''predominant'' metal could be as low as 20 percent or less. However, it did not appear appropriate to determine whether an alloy is considered to be an alloy of a particular metal based not on the percentage of that metal, but on how the remaining percentage is divided up among other elements. For example—

○ Under the ''predominance'' approach, an alloy of 35 percent titanium and 65 percent iron would not be considered a titanium alloy; it would be an iron alloy; but

○ An alloy of 35 percent titanium, 33 percent iron, and 32 percent nickel would be considered a titanium alloy (although it contains no more titanium than the prior example, and the non-titanium elements exceed the titanium element).

This anomaly is avoided by requiring an alloy to contain at least 50 percent titanium to be considered a titanium alloy. Using this approach, an alloy is named by whatever combination of metals equals at least 50 percent of the alloy (e.g., the last named example would be a titanium-iron alloy).

DoD concluded that there is no generally accepted industry definition to the contrary. The proposed rule does not establish a universal definition, but a definition that is appropriate within this specific regulation.

ii. *Steel.*

The definition of ''specialty metal'' is dependent on the meaning of the term ''steel.'' In order to know whether a particular alloy that has more than 1.65 percent manganese meets the definition in 252.225–70X2(a)(12)(i)(A), it is necessary to be able to first determine whether or not it meets the definition of ''steel''. The proposed rule defines ''steel'' as an iron alloy that includes between .02 and 2 percent carbon and may include other elements. The range of percentage of carbon for steel is based on the Metals Handbook of the American Society of Metals.

Therefore, as used in the proposed rule, steel must have at least 50 percent iron to be an iron alloy, and it must also have between .02 and 2 percent carbon. There are low-carbon steels and high-carbon steels. If the percentages of other metals increase, the material is termed an alloy steel.

b. *Commercially available off-the-shelf (COTS) items.* 10 U.S.C. 2533b(m)(5) specifies that ''commercially available off-the-shelf'' has the meaning provided at 41 U.S.C. 431(c), i.e., a commercial item sold in substantial quantities in the commercial marketplace and offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace. The proposed rule contains a definition of ''COTS item'' that reflects the definition at 41 U.S.C. 431(c) and also the provisions of 10 U.S.C. 2533b, which make the specialty metals restriction applicable to items delivered under subcontracts at any tier. As implemented in the proposed rule at 252.225–70X2(c)(2)(ii), COTS items are determined at the point of sale by the next higher tier in the supply chain.

c. *Produce.* 10 U.S.C. 2533b requires that specialty metals be melted or produced in the United States. The proposed rule adds a definition of ''produce'' at 252.225–70X1(a)(2) and 252.225–70X2(a)(9). Specialty metals may be melted in another country, but certain significant production processes occur in this country. Furthermore, using new production methods, specialty metals may not even be ''melted'' to achieve the desired physical properties.

d. *High performance magnet.*

The proposed rule defines ''high performance magnet'' to mean a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium). DoD considers that magnets containing rare earth elements (such as samarium) should be the only magnets included in the definition of ''high performance magnet,'' because they are so technologically superior in magnetic performance to other types of magnets and make miniaturization possible in many electronic applications. This definition of high performance magnets includes magnets made from samarium cobalt, neodymium iron-boron, and ferrites, but of these high performance magnets, only samarium cobalt magnets contain specialty metals. Therefore, this proposed rule, which addresses restrictions on the acquisition of specialty metals, only impacts the acquisition of samarium cobalt high performance magnets. Although alnico magnets contain specialty metals, they are not high performance magnets. Therefore, if an alnico magnet is a COTS item, the specialty metals in it are not covered by the restriction. This definition of high performance magnet is in the proposed rule at 252.225–70X2(a)(8).

e. *Automotive item.* The definition of ''automotive item'' in the proposed rule clarifies that the term means military transport vehicles. The use of ''tank'' in conjunction with the term ''automotive items'' at 10 U.S.C. 2533(a)(1) implies that this product category is intended to cover tactical, combat-type vehicles, not commercially available off-the-shelf cars, trucks, or vans. This definition is in the proposed rule at 225.7003–1(b).

f. *Component.* 10 U.S.C. 2533b(m)(2) specifies that ''component'' has the meaning provided at 41 U.S.C. 403, i.e., any item supplied to the Federal Government as part of an end item or of another component. This definition is in the proposed rule at 252.225–70X2(a)(5).

g. *Assembly, end item,* and *subsystem.* 10 U.S.C. 2533b provides new definitions of these terms, which have been incorporated in the proposed rule at 252.225–70X2(a)(2), (a)(7), and (a)(14) respectively. The definition of ''end item'' has been tailored for contract use.

5. Clauses and Clause Prescriptions

a. The proposed rule removes the contract clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals, and adds three new contract clauses and a new solicitation provision as follows:

○ 252.225–70X1, Restriction on Acquisition of Specialty Metals, applies to the acquisition of specialty metal as an end item.

○ 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals, applies to the acquisition of specialty metal as a component of an item in one of six major product categories.

○ 252.225–70X3, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, applies to solicitations for which it is anticipated that offers of commercial derivative military articles may be received.

○ 252.225–70X4, Reporting of Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items, applies to solicitations and contracts that contain the clause 252.225–70X2, are for the acquisition of noncommercial end products, and are awarded in fiscal year 2009.

b. 10 U.S.C. 2533b requires application of the specialty metals restrictions to commercial items. Therefore, requirements for use of 252.225–70X1 and 252.225–70X2 have been added to the clause at 252.212–7001, Contract Terms and Conditions

Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. In addition, 252.225–70X3 has been added to the list of provisions applicable to the acquisition of commercial items at 212.301.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The proposed rule affects producers of specialty metals, and manufacturers of components containing specialty metals that will be incorporated into end items to be acquired by DoD. Producers of specialty metals are generally large businesses. There is a high capitalization requirement to establish a business that can melt or produce specialty metals. The small business size standard for primary metal manufacturing ranges from 500 to 1,000 employees. All the specialty metals producers reviewed had more than 500 employees. There are numerous manufacturers of products containing specialty metals, either as prime contractors or subcontractors. DoD does not have the data to determine the total number of these manufacturers, or the number that are small businesses, because the Federal Procurement Data System only collects data on prime contractors and end items, not subcontractors and components of end items.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies, because the proposed rule contains information collection requirements. DoD invites comments on the following aspects of the proposed rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Restriction on Acquisition of Specialty Metals.

Type of Request: New collection.

Number of Respondents: 3,885.

Responses per Respondent: Approximately 4.

Annual Responses: 15,390.

Average Burden per Response: Approximately 100 hours.

Annual Burden Hours: 1,544,000.

Needs and Uses: DoD needs the information required by 252.225–70X4 (fiscal year 2009 contract awards only) to prepare the report to Congress required by 10 U.S.C. 2533b(i). The report must include, at a minimum, a description of the types of items containing specialty metals that are being acquired as commercially available off-the-shelf components of noncommercial items and, therefore, are exempted from domestic source requirements.

DoD needs the information required by 252.225–70X3 to satisfy the requirement of 10 U.S.C. 2533b(j), for an offeror to certify that it will take certain actions with regard to specialty metals if the offeror chooses to use the alternative compliance approach when providing commercial derivative military articles to the Government.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

List of Subjects in 48 CFR Parts 202, 212, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 202, 212, 225, and 252 as follows:

1. The authority citation for 48 CFR parts 202, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

2. Section 202.101 is amended by revising the definition of ''Commercially available off-the-shelf item'' to read as follows:

202.101 Definitions.

Commercially available off-the-shelf item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(xiii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xiii) Use the provision at 252.225–70X3, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003–5(b).

4. Section 212.570 is revised to read as follows:

212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7003–3(b)(2)(i).

PART 225—FOREIGN ACQUISITION

5. Section 225.7001 is amended by revising paragraph (b) and removing paragraph (d). The revised text reads as follows:

225.7001 Definitions.

* * * * *

(b) *Component* is defined in the clauses at 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals, 252.225–7012, Preference for Certain Domestic Commodities, and 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

6. Section 225.7002 is added to read as follows:

225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

225.7002–1 [Amended]

7. Section 225.7002–1 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

225.7002–2 [Amended]

8. Section 225.7002–2 is amended as follows:

a. In paragraph (b), in the first sentence, by removing ''or (b)'';

b. By removing paragraph (b)(4);

c. By redesignating paragraph (b)(5) as paragraph (b)(4);

d. In newly designated paragraph (b)(4), by removing ''PGI 225.7002–2(b)(5)'' and adding in its place ''PGI 225.7002–2(b)(4)'';

e. In paragraph (f) introductory text, by removing '', specialty metals,'';

f. By removing paragraphs (m) and (n);

g. By redesignating paragraphs (o) and (p) as paragraphs (m) and (n), respectively; and

h. By removing paragraph (q).

225.7002–3 [Amended]

9. Section 225.7002–3 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

10. Section 225.7003 is revised to read as follows:

225.7003 Restrictions on acquisition of specialty metals.

11. Sections 225.7003–1 through 225.7003–5 are added to read as follows:

225.7003–1 Definitions.

As used in this section—

(a) *Assembly, commercial derivative military article, component, electronic component, end item, high performance magnet, required form,* and *subsystem* are defined in the clause at 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(b) *Automotive item*—

(1) Means a self-propelled military transport tactical vehicle, primarily intended for use by military personnel or for carrying cargo, such as—

(i) A high-mobility multipurpose wheeled vehicle;

(ii) An armored personnel carrier; or

(iii) A troop/cargo-carrying truckcar, truck, or van; and

(2) Does not include—

(i) A commercially available off-the-shelf vehicle; or

(ii) Construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

(c) *Produce* and *specialty metal* are defined in the clauses at 252.225–70X1, Restriction on Acquisition of Specialty Metals, and 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals. See PGI 225.7003–1(c) for examples of specialty metals.

225.7003–2 Restrictions.

The following restrictions implement 10 U.S.C. 2533b. Except as provided in 225.7003–3—

(a) Do not acquire the following items, or any components of the following items, unless any specialty metals contained in the items or components are melted or produced in the United States (also see guidance at PGI 225.7003–2(a)):

(1) Aircraft.

(2) Missile or space systems.

(3) Ships.

(4) Tank or automotive items.

(5) Weapon systems.

(6) Ammunition.

(b) Do not acquire a specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item, unless the specialty metal is melted or produced in the United States. This restriction applies to specialty metal acquired by a contractor for delivery to DoD as an end item, in addition to specialty metal acquired by DoD directly from the entity that melted or produced the specialty metal.

225.7003–3 Exceptions.

Procedures for submitting requests to the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) for a determination or approval as required in paragraphs (b)(5), (c), or (d) of this subsection are at PGI 225.7003–3.

(a) Acquisitions in the following categories are not subject to the restrictions in 225.7003–2:

(1) Acquisitions at or below the simplified acquisition threshold.

(2) Acquisitions outside the United States in support of combat operations.

(3) Acquisitions in support of contingency operations.

(4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2.

(5) Acquisitions of items specifically for commissary resale.

(6) Acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

(b) One or more of the following exceptions may apply to an end item or component that includes any of the following, under a prime contract or subcontract at any tier. The restrictions in 225.7003–2 do not apply to the following:

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187, determines that the domestic availability of a particular electronic component is critical to national security.

(2)(i) Commercially available off-the-shelf (COTS) items containing specialty metals, except the restrictions do apply to contracts or subcontracts for the acquisition of—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, and sheet, that have not been incorporated into end items, subsystems, assemblies, or components. Specialty metal supply contracts issued by COTS producers are not subcontracts for the purposes of this exception;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(1) The fasteners are incorporated into COTS end items, subsystems, or assemblies; or

(2) The manufacturer of such fasteners certifies that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

(ii) If this exception is used for an acquisition of COTS end items valued at $5 million or more per item, the acquiring department or agency shall submit an annual report to the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, in accordance with the procedures at PGI 225.7003–3(b)(2).

(iii) At the end of fiscal years 2008 and 2009, contractors are required to report use of this exception to acquire COTS items, containing specialty metal, that are incorporated into a noncommercial end item (see 252.225–70X4).

(3) Fasteners that are commercial items and are acquired under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

(4) Items listed in 225.7003–2(a), manufactured in a qualifying country or containing specialty metals melted in a qualifying country (see 225.872–1(a) and (b)).

(5) Specialty metal in any of the items listed in 225.7003–2 if the USD(AT&L), or an official authorized in accordance with paragraph (b)(5)(i) of this subsection, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (*i.e.*, a domestic nonavailability determination). See guidance in PGI 225.7003–3.

(i) The Secretary of the military department concerned is authorized, without power of redelegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination shall include—

(A) An analysis of alternatives that would not require a domestic nonavailability determination; and

(B) Written documentation by the requiring activity, with specificity, why such alternatives are unacceptable.

(ii) A domestic nonavailability determination that applies to more than one contract (i.e., a class domestic nonavailability determination), requires the approval of the USD(AT&L).

(A) At least 30 days before making a domestic nonavailability determination that would apply to more than one contract, the USD(AT&L) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(1) Publish a notice on the Federal Business Opportunities Web site (*http://www.FedBizOpps.gov* or any successor site) of the intent to make the domestic nonavailability determination; and

(2) Solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

(B) The USD(AT&L)—

(1) Will take into consideration all information submitted in response to the notice in making a class domestic nonavailability determination;

(2) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(3) Will ensure that any such domestic nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

(6) A minimal amount of otherwise noncompliant specialty metals (i.e. , specialty metals not melted or produced in the United States that are not covered by another exception listed in this paragraph (b)), if the total weight of noncompliant specialty metal does not exceed 2 percent of the total weight of all specialty metal in the end item. This exception does not apply to the specialty metals in high performance magnets.

(c) *Compliance for commercial derivative military articles.*

(1) The restrictions at 225.7003–2(a) do not apply to an item acquired under a prime contract if—

(i) The offeror has certified that the offeror and its subcontractor(s) will enter into a contractual agreement or agreements to purchase a specified amount of domestically melted or produced specialty metal in accordance with the provision at 252.225–70X3; and

(ii) The USD(AT&L), or the Secretary of the military department concerned, determines that the item is a commercial derivative military article (defense agencies see procedures at PGI 225.7003–3). The contracting officer shall submit the offeror's certification and a request for a determination to the appropriate official, through agency channels, and shall notify the offeror when a decision has been made.

(d) *National security waiver.* The USD(AT&L) may waive the restrictions at 225.7003–2 if the USD(AT&L) determines in writing that acceptance of the item is necessary to the national security interests of the United States (see procedures at PGI 225.7003–3). This authority may not be delegated.

(1) The written determination of the USD(AT&L)—

(i) Shall specify the quantity of end items to which the national security waiver applies;

(ii) Shall specify the time period over which the national security waiver applies; and

(iii) Shall be provided to the congressional defense committees before the determination is executed, except that in the case of an urgent national security requirement, the determination may be provided to the congressional defense committees up to 7 days after it is executed.

(2) After making such a determination, the USD(AT&L) will—

(i) Ensure that the contractor or subcontractor responsible for the noncompliant specialty metal develops and implements an effective plan to ensure future compliance; and

(ii) Determine whether or not the noncompliance was knowing and willful. If the USD(AT&L) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official shall consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

(3) Because national security waivers will only be granted when the acquisition in question is necessary to the national security interests of the United States, the requirement for a plan will be applied as a condition subsequent, and not a condition precedent, to the granting of a waiver.

225.7003–4 One-time waiver.

DoD may accept articles containing specialty metals that are not in compliance with the specialty metals clause of the contract if—

(a) Final acceptance takes place before September 30, 2010;

(b) The specialty metals were incorporated into items (whether end items or components) produced, manufactured, or assembled in the United States before October 17, 2006;

(c) The contracting officer determines in writing that—

(1) It would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

(2) The contractor and any subcontractor responsible for providing items containing non-compliant specialty metals have in place an effective plan to ensure compliance with the specialty metals clause of the contract for future items produced, manufactured, or assembled in the United States; and

(3) The non-compliance was not knowing or willful;

(d) The determination is approved by—

(1) The USD(AT&L); or

(2) The service acquisition executive of the military department concerned; and

(e) Not later than 15 days after approval of the determination, the contracting officer posts a notice on the Federal Business Opportunities Web site at *http://www.FedBizOpps.gov*, stating that a waiver for the contract has been granted under Section 842(b) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364).

225.7003–5 Solicitation provision and contract clauses.

(a) Unless an exception in 225.7003–3(a) or (d) applies (but see paragraph (c) of this subsection)—

(1) Use the clause at 252.225–70X1, Restriction on Acquisition of Specialty Metals, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Use the clause at 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

(b) Use the provision at 252.225–70X3, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations—

(1) That contain the clause at 252.225–70X2; and

(2) For which the contracting officer anticipates that one or more offers of commercial derivative military articles may be received.

(c) Use the clause at 252.225–70X4, Reporting of Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items, in solicitations and contracts that—

(1) Contain the clause at 252.225–70X2;

(2) Are for the acquisition of noncommercial end items; and

(3) Are awarded in fiscal year 2009.

(d) If an agency cannot reasonably determine at time of acquisition whether some or all of the items will be used in support of combat operations or in support of contingency operations, the contracting officer should not rely on the exception at 225.7003–3(a)(2) or (3), but should include the appropriate specialty metals clause or provision in the solicitation and contract.

(e) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty metals restrictions, identify in the Schedule those items that are subject to the restrictions.

225.7004–4 [Amended]

12. Section 225.7004–4 is amended by removing ''225.7003'' and adding in its place ''225.7008''.

225.7005–3 [Amended]

13. Section 225.7005–3 is amended by removing ''225.7003'' and adding in its place ''225.7008''.

225.7006–3 [Amended]

14. Section 225.7006–3 is amended in paragraph (a), and in the second sentence of paragraph (b), by removing ''225.7003'' and adding in its place ''225.7008''.

15. Section 225.7008 is added to read as follows:

225.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a) When specifically authorized by reference elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The USD(AT&L), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the USD (AT&L) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see 225.7006). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(XXX 2008)'';

b. By removing paragraph (b)(6);

c. By redesignating paragraphs (b)(7) through (21) as paragraphs (b)(8) through (22) respectively;

d. By redesignating paragraph (b)(5) as paragraph (b)(7);

e. By adding new paragraphs (b)(5) and (b)(6);

f. By removing paragraph (c)(1); and

g. By redesignating paragraphs (c)(2) through (4) as paragraphs (c)(1) through (3), respectively. The added text reads as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

(5) __ 252.225–70X1, Restriction on Acquisition of Specialty Metals (XXX 2008) (10 U.S.C. 2533b).

(6) __ 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals (XXX 2008) (10 U.S.C. 2533b).

* * * * *

252.225–7014 [Removed and Reserved]

17. Section 252.225–7014 is removed and reserved.

252.225–7015 [Amended]

18. Section 252.225–7015 is amended in the introductory text by removing ''225.7002–3(c)'' and adding in its place ''225.7002–3(b)''.

19. Sections 252.225–70X1 through 252.225–70X4 are added to read as follows:

252.225–70X1 Restriction on acquisition of specialty metals.

As prescribed in 225.7003–5(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (XXX 2008)

(a) *Definitions.* As used in this clause—

(1) *Alloy* means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

(2) *Produce* means the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder.

(3) *Specialty metal* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

(4) *Steel* means an iron alloy that includes between 0.02 and 2 percent carbon and may include other elements.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas.

(End of clause)

252.225–70X2 Restriction on acquisition of certain articles containing specialty metals.

As prescribed in 225.7003–5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (XXX 2008)

(a) *Definitions.* As used in this clause—

(1) *Alloy* means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

(2) *Assembly* means an item forming a portion of a system or subsystem that—

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

(3) *Commercial derivative military article* means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

(4) *Commercially available off-the-shelf item*—

(i) Means any item of supply that is—

(A) A commercial item;

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App 1702), such as agricultural products and petroleum products.

(5) *Component* means any item supplied to the Government as part of an end item or of another component.

(6) *Electronic component* means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component.

(7) *End item* means the final production product when assembled or completed and ready for delivery under a line item of this contract.

(8) *High performance magnet* means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

(9) *Produce* means the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder.

(10) *Qualifying country* means any country listed in subsection 225.872–1(a) or (b) of the Defense Federal Acquisition Regulation Supplement (DFARS).

(11) *Required form* means in the form of mill product, such as bar, billet, wire, slab, plate, or sheet, and in the grade appropriate for the production of—

(i) A finished end item to be delivered to the Government under this contract; or

(ii) A finished component assembled into an end item to be delivered to the Government under this contract.

(12) *Specialty metal* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

(13) *Steel* means an iron alloy that includes between 0.02 and 2 percent carbon and may include other elements.

(14) *Subsystem* means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) *Restriction.* Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions.* The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components;

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(1) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(2) The manufacturer of the fasteners certifies that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(ii) A COTS item is considered to be ''without modification'' if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (e.g., a special reinforced handle made of specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (e.g., a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (e.g.—An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial items, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with DFARS 225.7003–3 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form.

(6) A minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c), if the total amount of such noncompliant metals does not exceed 2 percent of the total weight of the noncompliant specialty metals in the end item, as estimated in good faith by the Contractor, does not exceed 2 percent of the total weight of all specialty metal in the end item. This exception does not apply to the specialty metals in high performance magnets.

(d) *Compliance for commercial derivative military articles.* As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if—

(1) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of ''commercial derivative military article''; and

(2) For each item that has been determined by the Government to meet the definition of ''commercial derivative military article,'' the Contractor has certified, as specified in the provision of the solicitation entitled ''Commercial Derivative Military Article-Specialty Metals Compliance Certificate'' (DFARS 252.225–70X3), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of-

(i) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(ii) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(3) For the purpose of this exception, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) To facilitate management of the minimal content exception in paragraph (c)(6) of this clause, the Contractor may, but is not required to, insert the substance of this clause, including this paragraph (e), but excluding paragraph (d), in subcontracts for items containing specialty metals.

(End of clause)

252.225–70X3 Commercial derivative military article-specialty metals compliance certificate.

As prescribed in 225.7003–5(b), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE (XXX 2008)

(a) *Definitions. Commercial derivative military article, commercially available off-the-shelf item, produce, required form,* and *specialty metal,* as used in this provision, have the meanings given in the clause of this solicitation entitled ''Restriction on Acquisition of Certain Articles Containing Specialty Metals'' (DFARS 252.225–70X2).

(b) The offeror shall list in this paragraph any commercial derivative military articles it

intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled ''Restriction on Acquisition of Certain Articles Containing Specialty Metals'' (DFARS 252.225–70X2). The offeror's designation of an item as a ''commercial derivative military article'' will be subject to Government review and approval.

(c) If the offeror has listed any commercial derivative military articles in paragraph (b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of-

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

252.225–70X4 Reporting of commercially available off-the-shelf items that contain specialty metals and are incorporated into noncommercial end items.

As prescribed in 225.7003–5(c), use the following clause:

REPORTING OF COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS THAT CONTAIN SPECIALTY METALS AND ARE INCORPORATED INTO NONCOMMERCIAL END ITEMS (XXX 2008)

(a) *Definitions. Commercially available off-the-shelf item* and *specialty metal,* as used in this clause, have the meanings given in the clause of this solicitation entitled ''Restriction on Acquisition of Certain Articles Containing Specialty Metals'' (DFARS 252.225–70X2).

(b) If the exception in paragraph (c)(2) of the clause at DFARS 252.225–70X2, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is used for a commercially available off-the-shelf (COTS) item to be incorporated into a noncommercial end item to be delivered under this contract, the Contractor shall—

(1) Follow the instructions on the Defense Procurement, Acquisition Policy, and Strategic Sourcing Specialty Metals Restriction Web site at *http://www.acq.osd.mil/dpap/cpic/ic/restrictions_on_specialty_metals_10_usc_2533b.html* to report information by contract as follows:

Contract awarded	Report by
Oct. 1, 2008—Dec. 30, 2008	Jan. 31, 2009.
Jan. 1, 2009—Mar. 31, 2009	Feb. 28, 2009.
Apr. 1, 2009—Jun. 30, 2009	Jul. 31, 2009.
Jul. 1, 2009—Sep. 30, 2009	Oct. 31, 2009.

(2) In accordance with the procedures specified at the website, provide the following information:

(i) Company Name.

(ii) Contract number and, if applicable, order number.

(iii) Product category of acquisition (i.e., Aircraft, Missiles and Space Systems, Ships, Tank-Automotive, Weapon Systems, or Ammunition).

(iv) The 6-digit North American Industry Classification System (NAICS) code of the COTS item contained in the non-commercial deliverable item to which the exception applies.

(v) The total dollars of the non-commercial items.

(vi) The total dollars of the COTS items to which the exception applies.

(End of clause)

[FR Doc. E8–16675 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–25017]

RIN 2127–AG41

Federal Motor Vehicle Safety Standards; Rearview Mirrors

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

ACTION: Withdrawal of rulemaking.

SUMMARY: In response to a petition for rulemaking, in 2005 the National Highway Traffic Safety Administration (NHTSA) proposed to amend Federal Motor Vehicle Safety Standard No. 111, ''Rearview Mirrors'' to require straight trucks with a gross vehicle weight rating (GVWR) of between 4,536 kilograms (10,000 pounds) and 11,793 kilograms (26,000 pounds) to be equipped with a system capable of providing drivers with a view of objects directly behind the vehicle. More refined data generated since the 2005 NPRM shows that the sub-population of mid-sized trucks accounts for only four of the estimated 183 fatalities per year due to back-over accidents. In addition, the recently signed Cameron Gulbranson Kids Transportation Safety Act of 2007 [1] (K.T. Safety Act of 2007) requires NHTSA to revise the Federal standard for rearward visibility, specifically to reduce backing crashes involving children and disabled people. Considering these developments, the agency believes it more appropriate to address backing safety of straight trucks as part of the comprehensive effort to address backing safety generally, and that solutions should be formulated after the completion and review of ongoing research and data gathering on backing safety. We are therefore withdrawing this rulemaking at this time.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Clarke Harper, Office of Crash Avoidance Standards (NVS–120), NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–1740) (Fax: 202–366–5930).

For legal issues, you may contact Mr. Ari Scott, (NCC–112), Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–2992) (FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

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V. Agency Decision to Withdraw the Rulemaking

I. Background

In March 1995, Mr. Dee Norton, an individual, submitted a petition for rulemaking seeking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, ''Rearview Mirrors,'' to require convex, cross-view mirrors on the rear of the cargo box of stepvans and walk-in style delivery and service trucks. The requested rule was intended to prevent future tragedies similar to one that befell Mr. Norton's grandson, who was killed when he was struck and backed over by a delivery truck in an apartment complex parking lot.

The agency granted Mr. Norton's petition. However, because Mr. Norton's solution was only one of many at that time, and the agency had no performance specification for cross-view mirrors, NHTSA published a request for comments in the **Federal Register** on June 17, 1996. The agency sought specific information on cross-view

[1] Public Law 110–189, February 28, 2008.

mirrors such as costs and performance specifications, and any other alternatives with costs similar to the mirrors described by Mr. Norton (61 FR 30586).[2] The agency received six comments in response to that notice. In general, commenters urged the agency to consider both visual systems such as cameras and mirrors and non-visual systems such as sonar or radar, to address the safety issue. Additionally, truck manufacturers suggested that mirrors would not address the safety problem and that there were several types of straight trucks for which cameras would not be an effective solution. In addition to the analysis of comments, NHTSA performed additional studies related to this rulemaking. A program was initiated to determine the size of the safety problem, that is, determine the number of people being backed over by a motor vehicle of any size. Using a combination of our own Fatality Analysis Reporting System (FARS) and National Center for Health Statistics data, the agency was able to estimate the number of non-traffic crashes, including backover accidents. Next, the agency performed research on state-of-the-art and prototype rear cross-view mirror designs.

On November 27, 2000, NHTSA published an advance notice of proposed rulemaking (ANPRM) (65 FR 70681).[3] In addition to a request for general comments, the ANPRM posed twenty specific questions regarding rear cross-view mirrors, rear video systems, and rear object detection systems.

NHTSA received fourteen comments in response to the ANPRM, including submissions from trade associations, automobile and rear object detection system manufacturers, fleet operators, organized labor, a State agency, and individuals. Although the commenters were generally supportive of efforts to improve backing safety, many expressed concerns about a regulatory requirement in this area. In addition to responding to the questions posed in the ANPRM, commenters also raised a variety of issues, including scope of the regulatory requirement, potential exclusions, alternatives to regulation, maintenance and training requirements, and preemption.

Using the information obtained from these two previous notices, the agency then published a Notice of Proposed Rulemaking (NPRM) on September 12, 2005 (70 FR 53753).[4] To address the identified problem of backing-related deaths and injuries associated with straight trucks, NHTSA proposed to amend FMVSS No. 111, to require medium straight trucks with a GVWR of between 4,536 kg (10,000 pounds) and 11,793 kg (26,000 pounds) to be equipped with either a cross-view mirror or rear video system in order to provide the driver with a visual image of a 3 meters by 3 meters area immediately behind the vehicle. The NPRM set out proposed requirements for each of these two compliance options, as well as test procedures suitable for each option. However, in light of concerns regarding the feasibility of attaching rear object detection systems on certain types of trucks, we also requested comments on categories of vehicles that the agency should consider excluding from the requirements of a final rule.

II. Summary of Comments to the NPRM

The agency received 55 comments pursuant to our September 12, 2005, NPRM. Comments were received from a variety of interested parties, including consumers, a consumer advocacy group, fleet operators, equipment manufacturers, vehicle manufacturers, trade associations, the National Institute of Occupational Safety and Health (NIOSH), and two members of Congress, Representative Marsha Blackburn and Representative Nathan Deal. These comments are available in Docket No. NHTSA–2004–19239, and are generally summarized as follows.

Comments from consumers were generally in favor of rear object detection systems, with several commenters urging the agency to expand the scope of the rulemaking to include all vehicles (including passenger vehicles). The consumer advocacy group recommended expansion of the proposal's applicability to passenger vehicles and larger trucks, recommended that the rule require a combination of cameras and non-visual systems, and recommended requiring retrofitting the systems onto existing vehicles. Conversely, one consumer suggested that we not regulate in this area and leave the decision to install a rear object detection system up to the purchaser of the vehicle.

Fleet operators expressed divergent opinions regarding the agency's proposal. Some delivery companies were generally supportive of the proposal and enthusiastic about rear object detection systems. However, fleets involved in construction suggested that we exclude construction service trucks from the proposed requirements because of the potential for ongoing maintenance problems associated with repairing systems subject to continuous damage in rugged environments such as construction sites. Fleets in the category of leasing companies (*e.g.*, self-move companies) were also opposed to mandatory regulation, again due to the potential maintenance burden and questionable system effectiveness, caused in part by the equipment being used by non-professional drivers who might substitute reliance on such systems for the recommended ''spotter'' system,[5] which they say has proven highly effective in practice for such users.

Equipment manufacturers were supportive of the intent of the proposal, and manufacturers of mirrors and camera systems had minor technical suggestions.

However, non-visual system equipment (*e.g.*, sonar or radar-based) manufacturers and Representatives Blackburn and Deal urged us to alter the rulemaking proposal to adopt broader criteria which would allow non-visual systems to be used to comply with the standard's requirement.

Vehicle manufacturers asked for changes to the proposal or exclusions for certain vehicles specific to their market. Several manufacturers of traditional straight delivery trucks had specific technical suggestions. Manufacturers of specialty trucks suggested their vehicles should be excluded from the proposed requirements because of the lack of any apparent safety need, difficulty in installing systems based on certain vehicle configurations, and durability problems associated with systems subject to excessive environmental abuse. The cited specialty vehicles included ambulances, buses, concrete trucks, refuse trucks, fire trucks, small volume equipment trucks, and sport utility vehicles (SUVs) with a GVWR of over 10,000 pounds.

Various associations also offered positions. The National Association of State Directors of Pupil Transportation Services requested that NHTSA not include a rear object detection requirement for school buses. The Truck Manufacturers Association questioned the appropriateness of a mandatory regulation, although it suggested that an

[2] This Request for Comments and the comments subsequently received are available in hard copy in Docket No. NHTSA–96–53. However, for ease of reference, the Request for Comments also has been included in the electronic docket located at *http://www.regulations.gov*, Docket No. NHTSA–2000–7967–25.

[3] Docket No. NHTSA–2000–7967–1.

[4] Docket No. NHTSA–2004–19239–1.

[5] A spotter is a person who stands outside a vehicle to aid the driver in backing and alert the driver of an object or person behind the vehicle, to ensure nothing or no one is in the way.

equipment standard might be useful if this equipment is voluntarily installed. The National Truck Equipment Association, which represents multistage manufacturers, argued that the proposed requirements may not be practical for certain types of vehicles, and that there could be problems with continual maintenance for construction-type vehicles. The Alliance of Automobile Manufacturers suggested the rulemaking was premature and should await completion of an assessment of rear object detection systems required under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[6] The Truck Renting and Leasing Association urged us to adopt less restrictive requirements and to delay the rule until a more accurate cost-benefit analysis could be conducted. The Truck Trailer Manufacturers Association urged the agency not to extend the proposed requirements to combination truck trailers, arguing that such systems would be impractical and of little benefit.

NIOSH provided insight into the scope of the backing problem in occupational settings and studies into potential solutions. Specifically, NIOSH provided data concerning backing accidents at highway construction sites and field experience studies concerning durability problems with rear video systems. Furthermore, NIOSH noted that a system whereby workers wear a device that can alert both the wearer and the driver of a vehicle when the wearer is in a danger zone offers some promise in addressing backing accidents involving heavy trucks.

III. Agency Activities Since the NPRM

As noted above, in 2005, Congress passed related mandates for the agency as part of its SAFETEA–LU legislation, specifically, requiring two actions by NHTSA related to backing incidents. In Section 10304, Congress mandated NHTSA to ''conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross weight rating of not more than 10,000 pounds attributable to movement of such vehicles.'' That provision of the Act further stipulated that the study shall, ''(1) Include an analysis of backover prevention technology; (2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation; and (3) provide an estimate of cost saving that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of (A) injuries and fatalities; and (B) damage to bumpers and other motor vehicle parts and damage to other objects.''

Under section 10305 of the Act, Congress directed the agency as follows: ''(a) In General.—In conjunction with the study required in section 10304, the National Highway Traffic Safety Administration shall establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic incidents'' and ''(b) data collection and publication.—The Secretary of Transportation shall publish the data collected under subsection (a) no less frequently than biennially.''

In response to section 10304 of SAFETEA–LU, a report of the agency's study of technologies with possible application to reducing deaths and injuries from backing passenger vehicles was submitted to Congress in November 2006. That report is titled, ''Vehicle Backover Avoidance Technology Study,'' and is available in the Department of Transportation docket at *http://www.regulations.gov*, Docket NHTSA–25579–0003.

In this Report to Congress, NHTSA reported on several systems currently available as original equipment on vehicles or as aftermarket products to evaluate their performance and potential effectiveness in mitigating backover crashes. The backover prevention technologies that are currently offered by vehicle manufacturers are marketed as ''parking aids,'' which are designed to assist attentive drivers in performing low speed parking maneuvers. Some aftermarket systems using similar technologies are being marketed as safety devices. NHTSA testing that predated SAFETEA–LU showed that the performance of sensor-based (ultrasonic and radar) parking aids in detecting child pedestrians behind the vehicle was typically poor, sporadic and limited in range. Based on calculation of the distance required to stop from a typical backing speed, detection ranges exhibited by the systems tested were not sufficient to prevent collisions with pedestrians or other objects. Of the technologies tested for their potential to reduce backover incidents, the camera-based system may have the greatest potential to provide drivers with reliable assistance in identifying people in the path of the vehicle when backing. However, the agency is concerned that the human factors issues surrounding camera systems are not well understood, issues such as: Will drivers use cameras if they are installed? Will they be relied on too much, to the exclusion of actually looking to the rear of a vehicle and checking rear view mirrors? Will new patterns of driver behavior that emerge if cameras are in place enhance the safe operation of vehicles?

In support of this rulemaking, NHTSA conducted research specifically aimed at evaluating the performance of various mirror, sensor and video systems for medium trucks. All the systems were purchased in the aftermarket. The systems evaluated include three sensor systems, one sensor/rear video combination system, one rear video system, and one rear cross-view mirror system. The results indicated that sensor-based systems were poor, sporadic, and limited in range with regards to their ability to consistently detect child pedestrians and objects. Additionally, the mirror system image was insufficient to allow drivers to see a small object behind a vehicle and would not be a very effective means of allowing drivers to see behind vehicles. Video systems provided excellent images but only under well-lit, good-weather conditions. The agency has conducted similar research involving light vehicles with similar results.

At this time, the agency does not know whether drivers would use the information from the video displays of rear object detection systems and if they did whether they would do so in enough time to prevent back-over incidents. Agency research involving driver use of rearward visual images in passenger vehicles is underway. This research will examine drivers' use of rearview video systems during backing maneuvers to assess their potential to reduce the incidence of collisions with rear obstacles and pedestrians. While performance testing of sensor-based backing systems and field of view measurement for rearview video systems give data to quantify their likelihood to ''perceive'' an obstacle behind a vehicle, only examining drivers' use of the systems can provide a sense of the potential effectiveness of the systems in preventing crashes. The main purpose of the study is to determine (1) whether drivers of vehicles equipped with camera systems look at the display prior to and/or during backing and (2) whether use of the system affects backing performance

[6] Pub. L. 109–59, 119 Stat. 1144 (2005).

(*i.e.*, obstacle avoidance success). We expect to complete the testing portion of this research in 2008 and believe that the findings of this study will apply to the performance of typical drivers of all straight trucks.

During the preparation of the Report to Congress, the agency also developed more refined non-traffic crash data than was reported in the 2005 NPRM.[7] The agency estimated in the Report to Congress, that there is an average of 183 fatalities annually for all backover crashes, which is below what was estimated in the NPRM. Our more recent data analysis focusing on trucks of the sort that were addressed in the original petition, is indicating that this a sub-population of straight trucks (those less than 20 feet in length), accounts for 2 of the estimated 183 fatalities per year due to back-over accidents. Similarly, when all straight trucks from 10,000 to 26,000 pounds GVWR (including those less-than-20-feet) are included, the number of fatalities from backovers accounts for only 4 fatalities per year.[8]

In response to sections 2012 and 10305 of SAFETEA–LU, the agency's National Center for Statistics and Analysis is currently exploring expanded approaches to gathering both injury and fatality data on non-traffic incidents, which include non-traffic backing crashes that occur on private property, in driveways, and in parking facilities. The primary issues facing NHTSA in the collection of data on non-traffic crashes are the collection of fatality and injury counts and the detailed data at the event level needed to fully understand the circumstances surrounding the crash. The agency conducted a review of existing systems within NHTSA, surveillance systems in other Federal agencies, and non-Federal sources to determine the feasibility for collecting non-traffic fatality and injury counts and detailed crash data. The review suggested possible expansion of NHTSA's existing crash databases and the use of other Federal agencies, especially the National Center for Health Statistics and the Consumer Product Safety Commission, which operate surveillance systems that may provide some useful information in arriving at a better estimate of the backover safety problem. However, the review of the non-Federal sources including hospital systems, emergency medical services systems, insurance company data, and news media databases found that they were generally incomplete or lacked the detail needed by NHTSA to understand the circumstances surrounding backing incidents.

Based upon this review, efforts to collect both the fatality and injury data and detailed collision data are underway. The agency is currently using the existing Fatality Analysis Reporting System (FARS) infrastructure to collect information about non-traffic crash fatalities and the National Automotive Sampling System (NASS) infrastructure for non-traffic injuries. Similarly, the agency's Special Crash Investigation team is conducting detailed investigations of backovers involving light passenger vehicles.

IV. Legislative Actions Since the NPRM

On February 28, 2008, the President signed the K.T. Safety Act of 2007. Section 2(b) of this law requires that within 12 months of the President's signing the bill, NHTSA must initiate rulemaking to expand the required driver's field of view behind vehicles to reduce deaths and injuries from backing crashes, especially crashes involving small children and disabled people. NHTSA must issue a final rule no later than three years after the President signs the bill. Section 2(c)(1) of this law requires that the expanded rear visibility requirements be phased-in. Section 2(c)(2) requires NHTSA to consider whether the phase-in should give priority to particular types of motor vehicles if NHTSA finds that there are any differences in the frequency with which individual types are involved in backing crashes.

The new law does not specifically influence the straight trucks at issue in this rulemaking. The K.T. Safety Act of 2007 is applicable only to motor vehicles with a GVWR of 10,000 pounds or less (see section 2(e)). However, as explained above, the agency believes that additional data on backovers collected by the agency, with regard to all vehicles, will allow us to address this problem in a more comprehensive manner.

V. Agency Decision To Withdraw the Rulemaking

The agency is charged by the new law to take a comprehensive look at backing safety for all types of motor vehicles. As described above, the agency has a great deal of research and data gathering currently underway that will allow us to develop appropriate and effective improvements to backing safety. The agency needs to better understand the effectiveness of the video-based systems. We believe the results of NHTSA's current study that will be completed in 2008 will substantially improve our understanding of how video systems are used by drivers and therefore their potential to reduce the backover risk. Given this, the agency believes that efforts to address medium truck backing safety by itself should held in abeyance pending the research and data gathering, and that this problem should be addressed as a part of the agency's comprehensive approach to backing safety.

Accordingly, we have decided to withdraw this rulemaking and incorporate medium trucks into consideration of a possible broad based approach, including passenger vehicles, to addressing the backing safety problem.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: July 15, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–16530 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–59–P

[7] See ''Regulatory Evaluation, FMVSS No. 111, Rear Detection System for Single Unit Trucks'' in Docket No. 25017.

[8] ''Estimation of Backover Fatalities'' at *http://www.regulation.gov,* Docket NHTA–25579.

Notices

Federal Register
Vol. 73, No. 140
Monday, July 21, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0012]

Notice of Determination of the High Pathogenicity Avian Influenza Subtype H5N1 Status of Denmark and France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination regarding the high pathogenicity avian influenza (HPAI) subtype H5N1 status of Denmark and France. Based on assessments of the animal health status of the two countries, which we made available to the public for review and comment through a previous notice, the Administrator has determined that the importation of live birds, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds from either Denmark or France presents a low risk of introducing HPAI H5N1 into the United States.

DATES: *Effective Date:* August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Regionalization Evaluation Services-Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2008, we published in the **Federal Register** (73 FR 16245–16246) a notice [1] in which we announced the availability for review and comment of assessments of the animal health status of Denmark and France relative to high pathogenicity avian influenza (HPAI) subtype H5N1. In the assessments, titled ''APHIS Analysis of the Status of High Pathogenicity Avian Influenza H5N1 in Denmark'' (December 2007) and ''APHIS Analysis of the Status of High Pathogenicity Avian Influenza H5N1 in France'' (December 2007), we presented the results of our evaluation of the prevalence of HPAI H5N1 in domestic poultry in the two countries in light of the actions taken by Danish and French animal health authorities during and since the outbreaks of HPAI H5N1 that occurred in those two regions in 2006.

Our assessments concluded that both Denmark and France had adequate detection and control measures in place at the time of the outbreak, that they have been able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations since that time, and that both Danish and French animal health authorities have control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into Denmark or France in either wild birds or domestic poultry.

We solicited comments on the notice for 30 days ending on April 28, 2008. We received one comment on our assessments, from the chief veterinary officer of Denmark. The commenter agreed with our findings, but suggested several nonsubstantive changes to our assessment of Denmark. We concur with the points raised by the commenter, and have updated the assessment accordingly. The updated assessment may be viewed on the Regulations.gov Web site.[2]

In our March 2008 notice we stated that, if we could identify no additional risk factors that would indicate that domestic poultry in either Denmark or France continue to be affected with HPAI H5N1 by the end of the comment period, we would conclude that the importation of live birds, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from either Denmark or France presents a low risk of introducing HPAI H5N1 into the United States. Based on the absence of adverse comments received during the comment period, we have decided that no additional risk factors exist.

Therefore we are removing our prohibition on the importation of these products from Denmark and France into the United States. Specifically:

- We are no longer requiring that processed poultry products from Denmark and France be accompanied by a VS import permit and government certification confirming that the products have been treated according to APHIS requirements;
- We are allowing unprocessed poultry products from Denmark and France to enter the United States in passenger luggage; and
- We are removing restrictions regarding the regions in Denmark and France from which processed poultry products may originate in order to be allowed entry into the United States in passenger luggage.

However, live birds from Denmark and France are still subject to the inspections at ports of entry and post-importation quarantines set forth in 9 CFR part 93, unless granted an exemption by the Administrator or destined for diagnostic purposes and accompanied by a limited permit.

Done in Washington, DC, this 15th day of July 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–16586 Filed 7–18–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0073]

Sirex Woodwasp; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to a proposed biological control program for Sirex woodwasp. The environmental assessment documents our review and analysis of environmental impacts

[1] To view the notice, the assessments, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0012.*

[2] See footnote 1.

associated with the proposed biological control program. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 20, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0073* to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0073.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–7228.

SUPPLEMENTARY INFORMATION:

Background

The Sirex woodwasp (*Sirex noctilio* Fabricius [Hymenoptera: Siricidae]) is a member of the horntail wasp family native to Europe, Asia, and northern Africa, where it is generally considered to be a secondary pest. In its native range, it attacks pines, such as Austrian (*Pinus nigra*), maritime (*P. pinaster*), and Scotch (*P. sylvestris*) pines, almost exclusively. While stressed trees are most at risk, Sirex woodwasp can also attack and kill healthy trees. Adult wasps are strong fliers and can naturally disperse up to 25 miles, especially when aided by strong winds. Sirex woodwasp can survive transportation in infested materials, such as logs, that are moved long distances and then be capable of infesting new areas. Because Sirex woodwasp inhabits the sapwood and larvae tunnel deep into host trees, this pest is difficult to detect with inspection.

Pines are the main hosts of Sirex woodwasp, which can complete its lifecycle on many species of pines. Thus far, in North America, jack pine (*P. banksiana*), red pine (*P. resinosa*), Scotch pine (*P. sylvestris*), and white pine (*P. strobus*) have served as hosts for Sirex woodwasp. In addition, Sirex woodwasp has been recorded on other conifers such as Douglas fir (*Pseudotsuga* spp.), fir (*Abies* spp.), larch (*Larix* spp.), and spruce (*Picea* spp.).

The first detection of a breeding population of the Sirex woodwasp in the United States was in 2004 in Oswego County, NY. As a result of surveys conducted in 2005, 2006, and 2007 by State and Federal officials, the Sirex woodwasp has been detected in additional counties in Michigan, New York, Pennsylvania, and Vermont.

In an environmental assessment prepared in March 2007, APHIS considered a program to control Sirex woodwasp in New York and Pennsylvania, the only States where Sirex woodwasp had been detected at that time. The environmental assessment evaluated four alternatives: No action, a quarantine program, a biological control program, and a combination of quarantine and biological control (preferred action) in New York and Pennsylvania. A finding of no significant impact was signed on June 21, 2007, in which APHIS determined that the proposed program (including quarantine and biological control) identified as the preferred action would not have a significant impact on the quality of the human environment in those States. Since that time, Sirex woodwasp has been detected in additional States, and APHIS would like to implement a biological control program in those States. In addition, if Sirex woodwasp were detected in other States, APHIS would want to implement a biological control program in those States, as well. Therefore, this environmental assessment considers the potential effects on the quality of the human environment from implementing a program for control of Sirex woodwasp in all of the currently infested States and in surrounding States where Sirex woodwasp would most likely be detected if it were to spread.

APHIS' review and analysis of the potential environmental impacts associated with this proposed biological control program are documented in detail in an environmental assessment entitled ''Proposed Program for the Control of the Woodwasp *Sirex noctilio* F. (Hymenoptera: Siricidae) in the Northeastern United States'' (May 2008). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 15th day of July 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–16585 Filed 7–18–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Request to Reinstate Previously Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intent to reinstate a previously approved information collection in support of the Single Family Housing Guaranteed Loan Program.

DATES: Comments on this notice must be received by September 19, 2008 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Joaquín Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, Stop 0784, Room 2250, USDA Rural Development, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–0784, telephone (202) 720–1465, E-mail *joaquin.tremols@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Single Family Housing Guaranteed Loan Program.

OMB Number: 0575–0179.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: Under this program, loan guarantees are provided to participating lenders who make loans to income eligible borrowers in rural areas. The purpose of this program is to promote affordable housing for low- and moderate-income borrowers in rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 27 minutes per response.

Respondents: Private sector lenders participating in the Rural Development Single Family Housing Guaranteed Loan Program.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 130.

Estimated Number of Responses: 234,000.

Estimated Total Annual Burden on Respondents: 105,131.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of 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. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742–1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 10, 2008.

James C Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. E8–16612 Filed 7–18–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Section 538 Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2008

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Housing Service (RHS) is amending a notice published April 21, 2008 (73 FR 21305–21307). This action is taken to extend the application obligation date of eligible applications. This amendment is to ensure that all applications that meet program criteria and have responded accordingly will be considered in the Demonstration Program.

Accordingly, the Notice published on April 21, 2008 (73 FR 21305–21307), is amended as follows:

On page 21306, in the second column, second paragraph, under the heading ''Demonstration Program Selection Process,'' the second paragraph is amended to read as follows: ''The first round of selections into the Demonstration Program will be made on April 25, 2008. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program set-aside funds of approximately $13 million, then the selection process for any remaining funds will be conducted again on July 11, 2008. If needed, an additional selection process will be conducted again on September 29, 2008. All applicants will be notified of the selection results no later than 30 business days from the date of selection.''

Dated: July 3, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–16344 Filed 7–18–08; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the District of Columbia Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 1 p.m. on Wednesday, August 6, 2008, at the Heritage Foundation, 214 Massachusetts Avenue, NE., Washington, DC 20002. The purpose of the meeting is to plan for a briefing on education issues in the District of Columbia.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, September 5, 2008. The address is Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to email their comments or to present their comments verbally at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533, or by e-mail: *agreene@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 16, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–16635 FILED 7–18–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–939]

Certain Tow Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Investigation

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

DATES: *Effective Date:* July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On June 24, 2008, the Department of Commerce (''the Department'') received a Petition concerning imports of certain non-motorized tow behind lawn groomers and certain parts thereof (''lawn groomers'') from the People's Republic of China (''PRC'') filed in proper form by Agri-Fab Inc. (''Agri-Fab'', hereafter referred to as ''Petitioner''). *See* Petition for the Imposition of Antidumping Duties: Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, dated June 24, 2008 (''Petition''). On June 27, July 3, July 7, and July 8, 2008, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, Petitioner filed supplemental information on the following topics: general issues (*i.e.*, scope, injury, and industry support) and U.S. price and normal value (''NV'') calculations on July 1, 2008; U.S. price and NV calculations on July 8, 2008; and scope and certain revisions to NV calculations on July 9, 2008. In addition, Petitioner provided additional information regarding an adjustment to NV on July 9, 2008, and additional clarification of the scope of the Petition on July 10, 2008. *See* Memorandum from Mark Manning, Program Manager, to the File, ''Phone Conversation With Agri-Fab Concerning Line-Item in Normal Value Calculation,'' dated July 9, 2008; and Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, ''Request to Agri-Fab, Inc. via Telephone Conversation, July 10, 2008.'' Petitioner also provided additional information on industry support on July 10, 2008. *See* Memorandum from Meredith A.W. Rutherford to the File, Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Phone Call with Petitioner Regarding Industry Support, dated July 9, 2008. Lastly, Petitioner provided an additional clarification to the scope on July 11, 2008. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, ''Scope Clarification,'' dated July 11, 2008.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleges that imports of lawn groomers from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigation. *See* ''Determination of Industry Support for the Petition'' section, infra.

Period of Investigation

The period of investigation (''POI'') is October 1, 2007, through March 31, 2008. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is certain lawn groomers and certain parts thereof. *See* Appendix I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments by August 4, 2008, which is 21 calendar days from the date of signature of this notice.[1] Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

[1] Twenty calendar days after the date of signature is Sunday, August 3, 2008.

Comments on Product Characteristics for Antidumping Duty Questionnaire

The Department is requesting comments from interested parties regarding the appropriate physical characteristics of lawn groomers to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise to allow respondents to accurately report the relevant factors of production, as well as develop appropriate product reporting criteria, in accordance with the Department's non-market economy (''NME'') methodology, as described in the ''Normal Value'' section, infra.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, interested parties may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product reporting criteria. The Department notes that it is not always appropriate to use all product characteristics as product reporting criteria. While there may be some physical product characteristics that manufacturers use to describe lawn groomers, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics of lawn groomers.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, the Department must receive public comments at the above-referenced address by August 4, 2008, and receive rebuttal comments by August 11, 2008.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total

production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the ''domestic like product'' as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain tow behind lawn groomers and certain lawn groomer parts constitute a single domestic like product; and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Antidumping Duty Investigation Initiation Checklist: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (''Initiation Checklist''), Analysis of Industry Support for the Petition at Attachment II, on file in the Central Records Unit (''CRU''), Room 1217 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether Petitioner has standing (*i.e.*, the domestic workers and producer supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section, above. To establish industry support, Petitioner provided its sales volume of the domestic like product for calendar year 2007, and compared that to total sales volume of the domestic like product for the industry. Petitioner stated that it ''used sales volumes * * * as a surrogate for production, because it does not have access to the actual production data of other domestic {lawn groomer} producers.'' *See* Petition, Volume 1, at 2. We have relied upon the data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act and PRC Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition). Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition). Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate. *See* PRC Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of lawn groomers from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, and the factors of production are also discussed in the initiation checklist. *See* Initiation Checklist. Should the need arise to use any of this information as facts available under

section 776 of the Act in our preliminary or final determination, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioner relied on one U.S. price quote for lawn groomers manufactured in the PRC and offered for sale in the United States. The price quoted was for one type of lawn groomer, *i.e.*, lawn sweeper, falling within the scope of the Petition. *See* Petition, Volume II, at 8 and Exhibit II–1. Petitioner deducted foreign inland freight and foreign brokerage and handling from this price. *See* Petition, Volume II, at 7–8 and Exhibit II–2.

Normal Value

Petitioner notes that the PRC is a non-market economy country (''NME'') and that no determination to the contrary has yet been made by the Department. *See* Petition, Volume II, at 2. The Department has previously examined the PRC's market status and determined that NME status should continue for the PRC. *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006 (available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf*). In addition, in recent investigations, the Department has continued to determine that the PRC is an NME country. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber From the People's Republic of China*, 72 FR 19690 (April 19, 2007); *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner argues that India is the appropriate surrogate country for the PRC because it is at a comparable level of economic development and it is a significant producer of comparable merchandise, specifically hand trucks. *See* Petition, Volume II, at 3. Petitioner asserts that no potential surrogate countries manufacture lawn groomers. *See* Petition, Volume II, at 2. Based on the information provided by Petitioner, the Department believes that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and a dumping margin for the U.S. price, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on its own consumption rates for producing 42-inch lawn sweepers in 2007. *See* Petition, Volume II, at 5, and Initiation Checklist. Petitioner states that its production experience is representative of the production process used in the PRC because all of the material inputs and processing are unlikely to be materially different for a Chinese producer of lawn groomers. *See* Petition, Volume II, at 3–5.

Petitioner valued the factors of production based on reasonably available, public surrogate country data, including official Indian government import statistics and sources recently used in other PRC proceedings conducted by the Department. Since Petitioner was unable to find input prices contemporaneous with the POI for electricity and gas, it adjusted for inflation using the wholesale price index for India, as published by the International Monetary Fund, *International Financial Statistics. See* July 8, 2008, supplemental to the Petition, at Exhibit 3. In addition, Petitioner made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate, as reported on the Department's Web site. *See* Petition, Volume II, at Exhibit II–4. Petitioner calculated a labor cost for the PRC based upon its own experience. *See* Petition, Volume II, at 6. To value labor, Petitioner used a labor rate of $1.04 per hour, as published on the Department's Web site, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and the Initiation Checklist. For purposes of initiation, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner based factory overhead expenses, selling, general and administrative expenses, and profit, based on the experience of Rexello Castors Private Ltd. (''Rexello''), an Indian manufacturer of comparable merchandise, namely hand trucks. *See* Petition, Volume II, at 7. For purposes of initiation, the Department finds Petitioner's use of Rexello's most recently available financial statement to calculate the surrogate financial ratios appropriate.

Fair Value Comparison

Based on the data provided by Petitioner, there is reason to believe that imports of lawn groomers from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the revised estimated dumping margin for lawn groomers from the PRC is 154.72 percent. *See Initiation Checklist* at II–9.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on lawn groomers from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of lawn groomers from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In this investigation, the Department will request quantity and value information from all known exporters and producers identified in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of*

China: Initiation of Antidumping Duty Investigation, 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005). Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than August 4, 2008. In addition, the Department will post the quantity and value questionnaire along with filing instructions on the Import Administration Web site, at *http://ia.ita.doc.gov/ia-highlights-and-news.html.* The Department will send the quantity and value questionnaire to those PRC companies identified in the July 8, 2008, supplement to the Petition, at Exhibit 2.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Separate Rates/Combination Rates Bulletin), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf.* The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days from the date of publication of this initiation notice in the **Federal Register**. As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates/Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than August 8, 2008, whether there is a reasonable indication that imports of lawn groomers from the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to this investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations [2]—Lawn Groomers From the People's Republic of China

The scope of these investigations covers certain non-motorized tow behind lawn groomers (''lawn groomers''), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of these investigations, even if the lawn groomer is designed to perform additional non-subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of these investigations. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigations.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigations. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigations.

Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the

[2] The scope is applicable to both the antidumping duty and countervailing duty investigations of lawn groomers from the People's Republic of China.

investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by these investigations. For purposes of these investigations, ''unassembled lawn groomers'' consist of either (1) all parts necessary to make a fully assembled lawn groomer, or (2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

(1) An assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;

(2) A sweeper brush;

(3) An aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;

(4) A spreader hopper;

(5) A rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;

(6) Dethatcher tines;

(7) Aerator spikes, plugs, or other aerating component; or

(8) A hitch.

The major components or parts of lawn groomers that are individually covered by these investigations under the term ''certain parts thereof'' are: (1) Brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: (1) Agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; (2) lawn or farm carts and wagons that do not groom lawns; (3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; (4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; (5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; (6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and (7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum-style'' spike aerators).

The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0030, 8432.90.0080, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in these investigations.

Appendix II

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the charts below, please provide the total quantity (in pieces) and total value (in U.S. dollars) of all your sales of merchandise covered by the scope of this investigation (*see* Appendix I of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2007, through March 31, 2008.

Market	Dethatchers			Sweepers			Aerators			Spreaders		
	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)
United States												
1. Export Price Sales												
2. a. Exporter name												
b. Address												
c. Contact												
d. Phone No												
e. Fax No												
3. Constructed Export Price Sales												
4. Further Manufactured Sales												
Total Sales												

TOTAL QUANTITY AND VALUE OF ALL LAWN GROOMERS AND PARTS THEREOF

Market	Total quantity (pieces)	Terms of sale	Total value (U.S. dollars)
United States			
1. Export Price Sales			
2. a. Exporter name			
b. Address			
c. Contact			
d. Phone No			
e. Fax No			
3. Constructed Export Price Sales			
4. Further Manufactured Sales			
Total Sales			

Total Quantity

Please report quantity on a piece basis.

Terms of Sales

Please report all sales on the same terms, such as ''free on board'' at port of export.

Total Value

All sales values should be reported in U.S. dollars. Please provide any exchange rates used and their respective dates and sources.

Export Price Sales

Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please *do not* include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales

Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please *do not* include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured Sales

Further manufacture or assembly (including re-packing) sales (''further manufactured sales'') refers to merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E8–16625 Filed 7–18–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review

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

SUMMARY: On January 16, 2008, the Department published the preliminary results of the aligned fifth administrative review and tenth new shipper review of the antidumping duty order on honey from the People's Republic of China (''PRC''). *See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 2890 (January 16, 2008) (''Preliminary Results''). These aligned reviews cover seven exporters or producer/exporters: (1) Dongtai Peak Honey Industry Co, Ltd. (''Dongtai Peak'') (2) Zhejiang Native Produce & Animal By–Products I/E Group Corporation (''Zhejiang Native''); (3) Wuhu Qinshi Tangye Co., Ltd. (''Wuhu Qinshi''); (4) Jiangsu Light Industry Products Imp & Exp (Group) Corp. (''Jiangsu Light''); (5) Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (''QMD''); (6) Inner Mongolia Altin Bee–Keeping (''IMA''), and (7) QHD Sanhai Honey Co., Ltd. (''QHD Sanhai''). For these final results, the Department finds that Wuhu Qinshi, Jiangsu Light, QMD, and IMA failed to cooperate by not acting to the best of their ability to comply with the Department's request for information and, as a result, have been assigned a rate based on adverse facts available (''AFA''). The Department has assigned Dongtai Peak and Zhejiang Native a separate rate for non–selected entities based on the calculation proposed by the Department.[1] Finally, after reexamining the *bona fides* of QHD Sanhai's single sale, the Department finds that sale is not a *bona fide* transaction; therefore, for these final results, the Department has rescinded the review with respect to QHD Sanhai. The period of review (''POR'') is December 1, 2005, through November 30, 2006. *See* ''Final Results of Review'' section below.

EFFECTIVE DATE: July 21, 2008.

[1] *See* April 18, 2008, letter from the Department of Commerce, to All Interested Parties, regarding 2005/2006 Administrative Review of Honey from the People's Republic of China (''April 2008, Letter'').

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Susan Pulongbarit, 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) 482–0409 or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2008, we published in the **Federal Register** the preliminary results of the aligned 2005/2006 administrative and new shipper reviews. *See Preliminary Results*. The POR is December 1, 2005, through November 30, 2006.

On April 18, 2008, the Department invited parties to comment in their case briefs on the Department's proposed methodology to calculate: 1) a rate for Zhejiang Native and Dongtai Peak, the separate rate entities in the instant review that were not selected for individual examination; and 2) a per–kilogram cash deposit rate for the separate rate entities and the PRC–wide entity. *See* Changes Since the *Preliminary Results* section below.

On April 25, 2008, the Department received case briefs from QHD Sanhai, Zhejiang Native, and the American Honey Producers Association and the Sioux Honey Association (collectively, ''petitioners''). On May 6, 2008, the Department received rebuttal briefs from QHD Sanhai and petitioners. On May 20, 2008, the petitioners submitted new factual information on the record of the review regarding QHD Sanhai's U.S. customer. On June 13, 2008, the Department accepted petitioners' submission of new factual information and invited comments from parties regarding the new information. On June 23, 2008, the Department received comments from QHD Sanhai regarding the new factual information.

Scope of the Order

The products covered by this order 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 subject to this 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 customs purposes, the Department's written description of the merchandise under the order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum for the Final Results in the 2005–2006 Administrative Review and New Shipper Review of Honey from the People's Republic of China from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated July 14, 2008, (''I&D Memo''), which is hereby adopted by this notice.[2] A list of the issues raised, all of which are in the I&D Memo, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (''CRU''), room 1117 of the Department of Commerce. In addition, a complete version of the I&D Memo can be accessed directly on the Web at http://trade.gov/ia. The paper copy and electronic version of the I&D Memo are identical in content.

Partial Rescission of Administrative Review

In the Preliminary Results, the Department issued a notice of intent to rescind this administrative review with respect to certain companies, as Mgl Yun Sheng Honey Co., Ltd. (''Mgl Yun Sheng''); Inner Mongolia Youth Trade Development Co., Ltd. (''Inner Mongolia Youth''); and Shanghai Bloom International Trading Co., Ltd. (''Shanghai Bloom''), certified that they did not export honey from China to the United States during the POR. *See Preliminary Results*, 73 FR 2890. The Department received no comments on this issue and there is no record evidence to challenge this finding. Therefore, the Department is rescinding this administrative review with respect to Inner Mongolia Youth, Mgl Yung Sheng, and Shanghai Bloom.

Finally, in light of comments from petitioners requesting a revision of the Department's *bona fides* analysis, with respect to its analysis of U.S. Customs and Border Production (''CBP'') data, the Department has subsequently reevaluated the circumstances surrounding QHD Sanhai's POR transaction and finds that the sale in question is not a bona fide transaction. Initially, in its *bona fides* analysis for the *Preliminary Results*, the Department analyzed the HTSUS subcategory 0409.00.0020: ''NATURAL HONEY PACKAGED FOR RETAIL SALE.'' For the final results, the Department finds that the HTSUS subcategory 0409.00.0025: ''COMB HONEY AND HONEY PACKAGED FOR RETAIL SALE'' is more appropriate because it is more specific to the subject merchandise sold by QHD Sanhai, and thus, the Department has reevaluated CBP data accordingly. As a result of our reevaluation and the change in HTS category examined, we have concluded that the single sale made by QHD Sanhai during the POR is not a *bona fide* commercial transaction based specifically on: 1) the high price and low quantity of QHD Sanhai's single POR sale; and 2) other indicia of a non–*bona fide* transaction. In sum, the totality of circumstances leads the Department to find that QHD Sanhai's single POR sale is a non–*bona fide* commercial transaction. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin. As QHD Sanhai had no other sales of subject merchandise during the instant POR, the Department is rescinding the new shipper review with respect to QHD Sanhai. For further discussion of this issue, *see* Comment 1 of the Issues and Decision Memorandum; *see also* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, regarding the Final *Bona Fides* Analysis of QHD Sanhai Co., Ltd. in the Aligned Fifth Administrative and Tenth New Shipper Review of Honey From the People's Republic of China, dated July 14, 2008.

Separate Rates

QMD, IMA, Zhejiang Native, and Dongtai Peak requested separate, company–specific antidumping duty rates. In the *Preliminary Results*, we found that Dongtai Peak and Zhejiang Native met the criteria for the application of a separate antidumping duty rate. *Preliminary Results*, 73 FR at 2893. Therefore, the Department has applied a rate to Dongtai Peak and Zhejiang Native separate from the rate established for the PRC–wide entity. Also in the *Preliminary Results*, the Department found that IMA and QMD ultimately ceased to participate in the administrative review, and hence do not qualify for separate rate status, but rather are appropriately considered to be part of the PRC–wide entity which is assigned an AFA rate of 221.02 percent. *Id.* The Department did not receive comments on this issue prior to these final results.

Use of Facts Otherwise Available and the PRC–Wide Rate

In the *Preliminary Results*, the Department found that QMD and IMA ceased participating in the administrative review, and both Wuhu Qinshi and Jiangsu Light did not respond to the Department's multiple requests for information. As noted above, the Department found that these two entities did not establish their eligibility for separate rate status, and thus such entities are deemed part of the PRC–wide entity. As the Department found that the PRC–wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information, the Department assigned the PRC–wide entity a rate based on AFA. The Department did not receive comments prior to these final results regarding the Department's preliminary application of AFA to the PRC–wide entity. *See Preliminary Results*, 73 FR 2890.

Therefore, for these final results, the Department has not altered its decision to apply total AFA to the PRC–wide entity in accordance with sections 776(a)(2)(A) and (B) and section 776(b) of the Tariff Act of 1930, as amended (''the Act'').

Changes Since the Preliminary Results

For the *Preliminary Results*, with respect to Zhejiang Native and Dongtai Peak, the two respondents in the administrative review eligible for a separate rate but not selected for individual examination, the Department preliminarily assigned the separate rate margin from the most recent segment of this proceeding in which such rate was issued, which in this case is the less than fair value investigation. We note, however, that in the second administrative review of honey from the PRC, the Department determined that per–kilogram antidumping duty cash deposit and assessment rates were appropriate. *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) (''AR2 *Final Results*''), and accompanying Issues and Decision Memorandum at Comment 7. The Department further stated that the quantity–based collection and assessment method would begin upon completion of those final results, and would be employed thereafter for all future reviews of this order. Given that the AR2 *Final Results* did not address per–kilogram rates for non–selected

[2] Due to the business proprietary nature of various comments from both petitioners and QHD Sanhai in their respective case and rebuttal briefs, the Department has addressed various comments in the Department's Final *Bona Fides* Memorandum.

separate rate respondents or the PRC–wide entity, for the final results of the instant review, the Department proposed a new methodology to calculate: 1) a per–kilogram cash deposit rate for non–selected separate entities; and 2) a per–kilogram cash deposit rate for the PRC–wide entity. *See* April 18, 2008, Letter.

Calculation of Per–Kilogram Cash Deposit and Assessment Rates

For these final results, for Zhejiang Native and Dongtai Peak, the Department has assigned a cash deposit and assessment rate of $0.98 per–kilogram. In deriving this per–kilogram rate, the Department first determined the appropriate *ad valorem* rate to be applied to these entities which are eligible for separate rate status but not selected for individual examination. Although in its Preliminary Results, the Department applied an *ad valorem* rate to Zhejiang Native and Dongtai Peak based on the rate established for entities separate from the PRC–wide entity in the LFTV phase of this proceeding, in reexamining the record, the Department finds that the more recent calculated rates determined by the Department in the December 1, 2004, through November 30, 2005, review period are more contemporaneous and thus more appropriate for purposes of establishing a rate for non–selected separate entities in this POR. The Department calculated a simple average of the calculated rates for all respondents (inclusive of new shippers and administrative review companies) in the December 1, 2004, through November 30, 2005, POR (with the exception of rates based on total AFA and rates of *de minimis*). See April 18, 2008, Letter at Attachment I. The resulting *ad valorem* rate is 104.88 percent.

Next, to convert this ad valorem rate into a per–kilogram rate, the Department obtained from CBP, all ''type 3'' entries of subject merchandise under the relevant subheadings classifiable under HTSUS 0409.00.00, 1702.90.90, and 2106.90.99, as defined by the scope of the order, which entered the United States during the POR. The Department used the total quantity and total value of the entries to derive a weighted average unit price (''AUV''). We then multiplied the AUV by the *ad valorem* rate of 104.88%, calculated as described above. Finally, we took the resulting USD figure, which represents total antidumping duties owed and divided such by the quantity referenced above to arrive at a per–kilogram assessment and cash deposit rate of $0.98, to be applied to Zhejiang Native and Dongtai Peak.

To arrive at a per–kilogram rate for the PRC–wide rate entity, we began with the *ad valorem* AFA rate assigned to such entity for purposes of these final results. That rate is 221.02 percent. The Department then followed the same methodology outlined above, i.e., multiplying the *ad valorem* rate of 221.02 percent by the AUV for all imports of subject merchandise into the United States during the, and then divided the resulting figure representing total antidumping duties owed by the relevant quantity. For the PRC–wide entity, this calculation results in a per–kilogram assessment rate of $2.06.

In Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 37715, (July 11, 2007), the Department found that the current PRC–wide entity rate did not need to be corroborated, as the rate was based on, and calculated from, information submitted by a respondent in the course of the administrative review; *i.e.*, it is not secondary information. Similarly, for these final results, the Department finds that corroboration of the PRC–wide per–kilogram cash deposit assessment rate is not required because the per–kilogram cash deposit assessment rate is based on ad valorem rates which were calculated using information submitted by respondents in the course of the most recently completed review period (December 1, 2004, through November 30, 2005). *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Tariff Act of 1930, as amended (the Act).

Final Results of Review

We determine that the following antidumping duty margins exist:

Exporter	Margin (per–kilogram)
Dongtai Peak Honey Industry Co., Ltd.	$0.98/Kg
Zhejiang Native Produce & Animal By–Products I/E Group Corporation	$0.98/Kg
PRC–Wide Rate (including QHD Sanhai, Wuhu Qinshi, Jiangsu Light, QMD, and IMA)	$2.06/Kg

Assessment of Antidumping Duties

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. *See* Changes Since the Preliminary Results above. We will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Dongtai Peak and Zhejiang Native, the cash deposit rate will be $0.98 per kilogram; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Wuhu Qinshi, Jiangsu Light, QMD, and IMA), the cash–deposit rate will be the PRC–wide rate of $2.06 per–kilogram; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

List of Issues

Company–Specific Issues

Comment 1: The *Bona Fides* of QHD Sanhai's Single POR Sale
Comment 2: Selection of Mandatory Respondents–Zhejiang
Comment 3: Selection of the Appropriate Separate Rate Applied to Zhejiang's Sales

General Issues

Comment 4: Selection of Appropriate Surrogate Value for Raw Honey
Comment 5: Selection of Appropriate Surrogate Values–Coal, Labels, and Aluminum Seals

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–940]

Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–4146, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On June 24, 2008, the Department of Commerce (the Department) received a petition filed in proper form by Agri–Fab, Inc. (petitioner), domestic producers of certain tow–behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (PRC). On June 27, 2008, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues and the countervailable subsidy allegations. Based on the Department's request, petitioner timely filed additional information concerning the petition on July 2, 2008. On June 27 and July 7, 2008, the Department issued requests for additional information and clarification of certain areas of the petition. Based on the Department's requests, petitioner filed supplemental information on the following topics: general issues (*i.e.*, scope, injury, and industry support) and scope on July 9, 2008. In addition, petitioner provided an additional clarification of the scope of the Petition on July 10, 2009. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, ''Request to Agri–Fab, Inc. via Telephone Conversation, July 10, 2008.'' Petitioner also provided additional information on industry support on July 10, 2008. *See* Memorandum from Meredith A.W. Rutherford to the File, Petitions for the Imposition of Antidumping and Countervailing Duties – Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Phone Call with Petitioner Regarding Industry Support, dated July 9, 2008. Lastly, petitioner provided an additional clarification to the scope on July 11, 2008. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, ''Scope Clarification,'' July 11, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioner alleges that manufacturers, producers, or exporters of lawn groomers in the PRC received countervailable subsidies within the meaning of section 701 of the Act, and that imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (*see infra*, ''Determination of Industry Support for the Petition'').

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2007. See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is certain lawn groomers and certain parts thereof. *See* Attachment I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of the Investigation

During our review of the petition, we discussed the scope with petitioner to ensure that it is an accurate reflection of the merchandise for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 4, 2008, which is 21 calendar days from the date of signature of this notice.[1] Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC) for consultations with respect to the countervailing duty petition. The Department held these consultations on July 9, 2008. *See* Memorandum to the File, *Petition on Certain Tow Behind Lawn Grooming Products and Certain Parts Therof from the People's Republic of China: Consultations with the Government of the People's Republic of China*, July 11, 2008 and on file in the Central Records Unit (CRU), Room 1117 of the main Commerce Building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act, provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

[1] Twenty calendar days after the date of signature is Sunday, August 3, 2008.

petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain tow behind lawn groomers and certain lawn groomer parts constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see Countervailing Duty Investigation Initiation Checklist: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China* (*Initiation Checklist*), Industry Support at Attachment II, on file in the CRU.

In determining whether petitioner has standing (*i.e.*, those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, petitioner provided its sales volume of the domestic like product for calendar year 2007, and compared that to total sales volume of the domestic like product for the industry. Petitioner stated that it ''used sales volumes . . . as a surrogate for production, because it does not have access to the actual production data of other domestic {lawn groomer} producers.'' *See* Petition, Volume 1, at 2. We have relied upon data petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that petitioner has established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(I) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

The Department finds that petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of lawn groomers from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industry producing lawn groomers. In addition, petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested

party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioner supporting the allegations. The Department has examined the countervailing duty petition on certain lawn groomers and parts thereof from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of certain lawn groomers and parts thereof from the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise:

A. National Preferential Income Tax Programs

1. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
2. Income Tax Reductions for Export–Oriented Enterprises
3. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise

B. Value Added Tax (VAT) and Indirect Tax Programs at the National Level

1. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
2. Income Tax Credits on Purchases of Domestically–Produced Equipment by Domestically Owned Companies
3. VAT refunds for FIEs Purchasing Domestically Produced Equipment
4. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
5. Export Incentive Payments Characterized as ''VAT Rebates''

C. Provision of Hot–Rolled Steel at Less Than Adequate Remuneration

D. Provincial and Local Income Tax Programs

1. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)
2. Income Tax Preferential Programs for FIEs in Zhejiang Province
3. VAT Refunds for Encouraged FIEs Purchasing Domestic Equipment in Zhejiang Province
4. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Zhejiang Province
5. Export–Based ''Reward'' Subsidies for Enterprises in Zhejiang Province
6. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
7. Income Tax Programs in Huimin Industrial Park in Zhejiang Province
8. Export–Based ''Reward'' Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
9. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Huimin Industrial Park in Zhejiang Province
10. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
11. Export Incentive Payments in the Form of VAT Rebates for Companies Located in the Hangzhou Export Processing Zone in Zhejiang Province

E. Preferential Policies and Benefits for Enterprises Located in Shandong Province

1. Provision of Land for Less Than Adequate Remuneration for Export–Oriented FIEs for Enterprises Located in Shandong Province

F. Preferential Policies and Benefits in Qingdao Municipality

1. Income Tax Programs for FIEs Located in Qingdao Municipality
2. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
3. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Qingdao Municipality
4. Provision of Land for Less Than Adequate Remuneration for Export–Oriented FIEs Located in Qingdao Municipality

G. Preferential Policies and Benefits for Enterprises Located in the Lingang Processing Industrial Zone in Qingdao Municipality

1. Income Tax Programs in the Lingang Processing Industrial Zone
2. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in the Lingang Processing Industrial Zone

For further information explaining why the Department is investigating these programs, see Initiation Checklist. We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC.

1. Preferential Loans Pursuant to the Iron and Steel Policy
2. Preferential Lending Policies in Pursuant to Provincial Five–Year Plans (Shandong and Zhejiang Provinces)

For further explanation of the Department's decision not to investigate these programs, *see Initiation Checklist*.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non–market economy (NME) country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488 (December 18, 2003). In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1; *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, because petitioner has provided sufficient information to support its allegations to meet the statutory criteria for initiating a countervailing duty investigation of certain tow behind lawn groomers and parts thereof from the PRC, initiation of a countervailing duty investigation is warranted in this case.

Respondent Selection

To determine the total and relative volume and value of import data for each potential respondent, the Department normally relies on Customs and Border Protection import data for the POI. However, in the instant proceeding, the Harmonized Tariff Schedule of the United States (HTSUS) categories that include subject merchandise are very broad, and include products other than products subject to this investigation. Further, imports of subject merchandise, as estimated by petitioner, account for only 3.8 percent by value of imports under the relevant HTSUS categories. Therefore, because of the unique circumstances of this case, the Department will issue ''Quantity and Value Questionnaires'' to potential respondents for the purposes of respondent selection.

The Department requires that the respondents submit a response to the quantity and value questionnaire. *See*, *e.g.*, *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008). This response must be submitted by all exporters/producers no later than July 28, 2008. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's website, at http://ia.ita.doc.gov/ia–highlights-and–news.html. The Department will send the quantity and value questionnaire to those PRC companies identified in the July 8, 2008, Supplement to the Petition, at Exhibit 2.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, by no later than August 8, 2008, whether there is reasonable indication that imports of subsidized certain tow behind lawn groomers and parts thereof from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry.

See Section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 14, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

Scope of the Countervailing Duty Investigation Lawn Groomers from the People's Republic of China

The scope of this investigation covers certain non–motorized tow behind lawn groomers (''lawn groomers''), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non–subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units–when imported with one or more lawn grooming modules–with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components–:

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush

housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;

6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch.

The major components or parts of lawn groomers that are individually covered by this investigation under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0030, 8432.90.0080, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this petition.

[FR Doc. E8–16627 Filed 7–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing and Services' Sustainable Manufacturing Initiative; Update

ACTION: Notice of first round of regional showcase tours in support of Commerce's Sustainable Manufacturing Initiative; request for suggestions of other cities and regions to be considered for future tours.

SUMMARY: The International Trade Administration's Manufacturing & Services Unit is planning a new project as part of its Sustainable Manufacturing Initiative, to be known as ''SMART,'' which through a series of regional tours across the United States will showcase sustainable manufacturing practices. SMART (''Sustainable Manufacturing's American Regional Tours'') will travel to a number of cities and regions in order to demonstrate the feasibility and viability of sustainable manufacturing practices for U.S. firms.

DATES: Submit comments no later than 30 days after the date of this notice.

ADDRESSES: Address all comments concerning this notice to Sustainable Manufacturing's American Regional Tours, U.S. Department of Commerce, Room 2213, 1401 Constitution Ave., NW., Washington, DC 20230 (or via the Internet at *susmanuf@mail.doc.gov*).

FOR FURTHER INFORMATION CONTACT: Morgan Barr in Manufacturing & Services' Office of Trade Policy Analysis, 202–482–3703.

SUPPLEMENTARY INFORMATION: Sustainable manufacturing practices in the United States have become increasingly popular in recent years as companies look for new ways to make more efficient use of resources, ensure compliance with domestic and international regulations related to environment and health, enhance the marketability of their products and services, and last but not least, increase profitability. As the trend towards sustainable manufacturing practices grows, so do its implications for U.S. global competitiveness and firm profitability.

At the Department of Commerce, one of our main goals is to foster domestic and international conditions for doing business that allow U.S. firms to successfully compete as globalization evolves. Evidence has shown that firms incorporating both environmentally and economically sustainable manufacturing processes can gain competitive advantages by achieving inherent cost savings (i.e., improving their energy efficiency, minimizing raw materials usage, etc.) while at the same time reaping societal benefits for being good stewards of the environment. Many U.S. firms have demonstrated that being environmentally sustainable can also mean being more profitable.

In order to provide effective and continued support to U.S. companies in their sustainable manufacturing efforts, Commerce's Manufacturing and Services (MAS) unit has launched a Sustainable Manufacturing Initiative and public-private dialogue that aims to (a) identify U.S. industry's most pressing sustainable manufacturing challenges and (b) facilitate public and private sector efforts to address these challenges.

To help maintain and enhance forward momentum on this initiative, MAS is introducing its SMART project, which implements one of the four ''next steps'' identified by the Initiative's participants at MAS's September 2007 conference and enumerated in the April 2008 **Federal Register** notice (Vol. 73, No. 76/Friday, April 18, 2008): leading regional showcase tours to promote sustainable manufacturing.

Numerous U.S. companies have voiced concerns over the lack of visibility that sustainable manufacturing receives nationwide and the lack of information U.S. manufacturers possess in this field. In order to continue spreading awareness of sustainable manufacturing's benefits, both to U.S. global competitiveness and the environment, MAS will hold the first round of SMART cities and regions: St. Louis, MO (July 28, 2008), Grand Rapids, MI (September 3, 2008), and Rochester, NY (September 23, 2008).

SMART city events will most likely include tours of local manufacturing facilities that showcase those firms that are incorporating sustainable manufacturing techniques into their production processes or have facilities that are otherwise sustainable. The goal of these tours is to demonstrate to other similarly situated firms in the area that incorporating sustainable manufacturing techniques into the production cycle is not cost-prohibitive and, in fact, can help the long-term economic viability of American manufacturers.

Manufacturing and Services seeks public input on possible cities and/or regions that would benefit from hosting a SMART event or firms that would be willing to demonstrate and showcase their sustainable manufacturing capabilities and practices as part of a possible SMART event in their region (SMART participants will not be paid and funding is considered on a case-by-case basis).

Dated: July 14, 2008.

Matthew Howard,

Office of Trade Policy Analysis.

[FR Doc. E8–16524 Filed 7–18–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–HA–0116]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 20, 2008.

Title and OMB Number: Viability of TRICARE Standard Survey; OMB Control Number 0720–0031.

Type of Request: Revision.

Number of Respondents: 40,000.

Responses Per Respondent: 1.

Annual Responses: 40,000.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 3,333.

Needs and Uses: As mandated by Congress, confidential surveys of civilian health care providers and beneficiaries who use TRICARE will be completed in TRICARE market areas within the United States. The provider survey will be used to determine how many providers accept new TRICARE Standard patients in each market area. Surveys will be conducted in at least 40 locations in the United States each fiscal year from 2008 to 2011. Twenty locations will be TRICARE PRIME Service Areas and twenty locations will be geographic areas where TRICARE Prime is not offered.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: July 11, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–16595 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0031]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 20, 2008.

Title, Form, And OMB Number: Post Election Survey of Overseas Citizens and Post-Election Survey of Local Election Officials; OMB Number 0704–0125.

Type of Request: Revision.

Number of Respondents: 2,167.

Responses Per Respondent: 1.

Annual Responses: 2,167.

Average Burden Per Response: .31 hours.

Annual Burden Hours: 672.

Needs and Uses: The information collection requirement is necessary to meet a requirement of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 [42 U.S.C. 1973ff]. UOCAVA requires a report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State-Federal cooperation.

Affected Public: Individuals or households; state, local, or tribal government.

Frequency: Quadrennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: July 7, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–16597 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0080]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Notice to Alter a System of Records.

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

DATES: This proposed action would be effective without further notice on August 20, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–2386.

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

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 14, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 15, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DWHS E02

Freedom of Information Act Cast Files (March 28, 2007, 72 FR 14530).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add to entry ''DoD Educational Activity Records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director for Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA); individuals whose requests and/or records have been processed under FOIA and referred by other Federal agencies; and attorneys representing individuals submitting such requests.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''10 U.S.C. 2164 Department of Defense Domestic Dependent Elementary and Secondary Schools; 20 U.S.C. 921–932, Overseas Defense Dependent's Education; DoD Directive 1342.20 Department of Defense Education Activity;''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add to entry ''Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director for Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.''

NOTIFICATION PROCEDURE:

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

For Washington Headquarters records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director for Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature. If a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. For example, the parent may provide a copy of the child's school enrollment form signed by the parent, or copy of a divorce decree or travel order that includes the child's name, or an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child.

For personal visits to examine records, the individual should provide a form of picture identification, i.e., a driver license.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to:

For Washington Headquarters records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director for Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature. If a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. For example, the parent may provide a copy of the child's school enrollment form signed by the parent, or copy of a divorce decree or travel order that includes the child's name, or an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child.

For personal visits to examine records, the individual should provide a form of picture identification, i.e., a driver license.''

* * * * *

DWHS E02

SYSTEM NAME:

Freedom of Information Act Case Files.

SYSTEM LOCATION:

Washington Headquarters Records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Educational Activity Records: Department of Defense Education

Activity, FOIA Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA); individuals whose requests and/or records have been processed under FOIA and referred by other Federal agencies; and attorneys representing individuals submitting such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA requests and administrative appeals, i.e., original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, the Freedom of Information Act; 10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2164 Department of Defense Domestic Dependent Elementary and Secondary Schools; 20 U.S.C. 921–932, Overseas Defense Dependent's Education; DoD Directive 1342.20 Department of Defense Education Activity; and DoD 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the FOIA.

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

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

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

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

STORAGE:

Paper records in file folder and electronic storage media.

RETRIEVABILITY:

Retrieved by name, subject matter, date of document, and request number.

SAFEGUARDS:

Paper records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties. Computer databases are password protected and accessed by individuals who have a need-to-know.

RETENTION AND DISPOSAL:

Paper records that are granted are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, or do not state a willingness to pay fees, and records which are appealed or litigated are destroyed 6 years after final action. Electronic records are deleted when no longer needed to support Directorate business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Washington Headquarters Records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Education Activity Records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to

For Washington Headquarters records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

In addition, for DoD Education Activity records a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. For example, the parent may provide a copy of the child's school enrollment form signed by the parent, or copy of a divorce decree or travel order that includes the child's name, or an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature.

For personal visits to examine records, the individual should provide a form of picture identification, i.e., a driver license.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to

For Washington Headquarters records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, FOIA Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

In addition, DoD Education Activity records a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. For example, the parent may provide a copy of the child's school enrollment form signed by the parent, or copy of a divorce decree or travel order that includes the child's name, or an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature.

For personal visits to examine records, the individual should provide a form of picture identification, i.e., a driver license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing

initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA; the agency records searched in the process of responding to such requests and appeals; Department of Defense personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Defense requests concerning Department of Defense records or that have consulted with the Department of Defense regarding the handling of particular requests; submitters of records; and information that have provided assistance to the Department of Defense in making FOIA access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this FOIA case record, Washington Headquarters Services and DoD Education Activity hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. E8–16598 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DoD–2008–OS–0079]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Commissary Agency, DoD.

ACTION: Notice to Amend a System of Records.

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

DATES: This action will be effective without further notice on August 20, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Williamson at (804) 734–8777.

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

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

Dated: July 15, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

ZIG 001

SYSTEM NAME:

Commissary Patron Inquiry, Complaint, Comment, and Suggestion Files (June 1, 2001, 66 FR 29777).

CHANGES:

ID NUMBER:

Delete entry and replace with ''ZCC 001.''

SYSTEM NAME:

Delete entry and replace with ''Commissary Customer Inquiry, Complaint, Comment, and Suggestion Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Corporate Communications, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the word ''Patrons'' and replace with ''Customers''.

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete ''and commissary''.

SAFEGUARDS:

Delete entry and replace with ''Automated records are stored in rooms with restricted access in a secure building. In addition, access is limited to the Corporate Communication's staff in performance of their official duties.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are shredded once the information is scanned into the database. Database information is destroyed after two years.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Customer Relations Specialist, Corporate Communication, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.''

* * * * *

ZCC 001

SYSTEM NAME:

Commissary Customer Inquiry, Complaint, Comment, and Suggestion Files.

SYSTEM LOCATION:

Corporate Communications, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers of the Commissaries who make inquiries, complaints, comments, or suggestions on its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, address, telephone number, and e-mail address; information pertaining to the subject of inquiry, complaint, comment, or suggestion, and response thereto; customer opinion survey data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301, Departmental Regulations; and 10 U.S.C 2482, Commissary stores: operation.

PURPOSE(S):

To aid the Defense Commissary Agency in determining needs of customers, responding to the customer's inquiries and comments, and determining action required to settle customer complaints.

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

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

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

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

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By customer's name, case number, and e-mail address.

SAFEGUARDS:

Automated records are stored in rooms with restricted access in a secure building. In addition, access is limited to the Corporate Communications staff in performance of their official duties.

RETENTION AND DISPOSAL:

Paper records are shredded once the information is scanned into the database. The database information is destroyed after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Customer Relations Specialist, Corporate Communications, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act/Privacy Officer, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.

The request should contain the individual's full name, address, and telephone number. These items are necessary for the retrieval of information.

Requests submitted on behalf of other persons must include their written authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act/Privacy Officer, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800.

The request should contain the individual's full name, address, and telephone number. These items are necessary for the retrieval of information.

Requests submitted on behalf of other persons must include their written authorization.

CONTESTING RECORD PROCEDURES:

The Defense Commissary Agency's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in Defense Commissary Agency Directive 30–13; 32 CFR part 327; or may be obtained from the Freedom Of Information Act/Privacy Officer at 1300 E. Avenue, Fort Lee, VA 23801–1800.

RECORD SOURCE CATEGORIES:

Information is provided by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–16602 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information: Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A.

Note: This notice includes one absolute priority with two phases, and funding information for each phase of the competition.

Dates:

Applications Available: July 21, 2008.

Deadline for Transmittal of Applications: See the chart in the *Award Information* section of this notice (Chart).

Deadline for Intergovernmental Review: See Chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities

Background

The Department has made Steppingstones of Technology Innovation for Children with Disabilities awards for several years under the Technology and Media Services for Individuals with Disabilities program. Awards are made in two phases: (1) Development and (2) research on effectiveness. Abstracts of projects funded under these two phases can be found at *http://www.nichcy.org/directories/FY07-Vol%203-R_I_T_M.pdf (see projects funded under CFDA 84.327A with Beginning Dates of June 1, 2007, or later).*

Priority: The Steppingstones of Technology Innovation for Children with Disabilities absolute priority requires grantees to develop, implement, and evaluate innovative technology approaches designed to improve results for children with disabilities. Phase 1 projects must develop, refine, and test the feasibility of technology-based approaches. Phase 2 projects must subject technology-based approaches to rigorous field-based research to determine their effectiveness.

To be considered for funding under the Steppingstones of Technology Innovation for Children with Disabilities absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The application, programmatic, and administrative requirements are as follows:

(a) In the application, an applicant must—

(1) Describe a technology-based approach for improving the results of (a) early intervention programs, (b) response-to-intervention (RTI) assessment techniques, or (c) preschool, elementary school, middle school, or high school educational programs for children with disabilities. The

technology-based approach must be an innovative combination of new technology and additional materials and methodologies that enable the technology to improve early intervention programs, RTI assessment techniques, or educational results for children with disabilities;

(2) Present a justification, based on scientifically rigorous research or theory, that supports the potential effectiveness of the technology-based approach described pursuant to paragraph (a)(1) of this priority for improving results for children with disabilities. The approach must have the potential to improve child outcomes, not just parent or provider outcomes. Child outcomes may include improved academic or pre-academic skills, improved behavioral or social functioning, and improved functional performance, provided that valid and reliable measurement instruments are employed to assess the outcomes. Technology-based approaches intended for use by providers or parents may not be funded under this priority unless child-level benefits are clearly demonstrated. Technology-based approaches for professional development will not be funded under this priority;

(3) Provide a detailed plan for conducting work in one of the following two phases:

(i) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities under Phase 1 of the priority may include development, adaptation, and refinement of technology, materials, or methodologies. Activities under Phase 1 of the priority must include a formative evaluation of the technology-based approach's usability and feasibility for use with children with disabilities. Each project funded under Phase 1 must be designed to develop, as its primary product, a promising technology-based approach that is suitable for field-based evaluation of its effectiveness in improving results for children with disabilities.

(ii) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with the criteria for activities funded under Phase 1, and subject the approach to rigorous field-based research to determine its effectiveness in educational or early intervention settings. Approaches studied under Phase 2 may have been developed with previous funding under Phase 1 of this priority or with funding from other sources. Phase 2 of this priority is primarily intended to produce sound research-based evidence demonstrating that the technology-based approach can improve educational or early intervention results for children with disabilities in a defined range of real world contexts.

Projects funded under Phase 2 of this priority must conduct research that poses a causal question and must employ randomized assignment to treatment and comparison conditions, unless a strong justification is made for why a randomized trial is not possible. If a randomized trial is not possible, the applicant must employ alternatives that substantially minimize selection bias or allow the selection bias to be modeled. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. In their applications, applicants proposing to use an alternative system must (1) make a compelling case that randomization is not possible, and (2) describe in detail how the procedures will result in substantially minimizing the effects of selection bias on estimates of effect size. Choice of randomizing unit or units (*e.g.*, students, classrooms, schools) must be grounded in a theoretical framework. Observational, survey, or qualitative methodologies may complement experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the technology-based approach being evaluated. Applications must provide research designs that permit the identification and assessment of factors that may have an impact on the fidelity of implementation. Mediating and moderating variables that are both measured in the practice or model condition and are likely to affect outcomes in the comparison condition must be measured in the comparison condition (*e.g.*, student time-on-task, teacher experience, or time in position).

Projects funded under Phase 2 of this priority must conduct comprehensive research in order to provide convincing evidence of the effectiveness or ineffectiveness of the technology-based approach under study, at least within a defined range of settings. Applicants must provide documentation that available sample sizes, methodologies, and treatment effects are likely to result in conclusive findings regarding the effectiveness of the technology-based approach;

(4) Provide a plan for forming collaborative relationships with vendors, other dissemination or marketing resources, or both to ensure that the technology-based approach can be made widely available if sufficient evidence of effectiveness is obtained. Applicants should document the availability and willingness of dissemination or marketing resources to participate. Applicants are encouraged to plan these collaborative relationships early in their projects, even in Phase 1 (if applicable), but should refrain from widespread dissemination of the technology-based approach to practitioners until evidence of its effectiveness is obtained in Phase 2; and

(5) Budget for the project director to attend an annual three-day Project Directors' meeting in Washington, DC, and another annual two-day trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority to share information, and to discuss findings and methods of dissemination.

(b) The project also must conduct the following activities:

(1) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

(2) If the project produces instructional materials for dissemination, produce them in accessible formats, including complying with the National Instructional Materials Accessibility Standard (NIMAS) for textual materials.

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) Projects led by a project director or principal investigator who is in the initial phase of his or her career. For purposes of this invitational priority, the initial phase of an individual's career is considered to be the first three years after the individual completes and graduates from a doctoral program (*i.e.*, for FY 2009 awards, projects may support individuals who completed and graduated from a doctoral program no earlier than the 2005–2006 academic year). To qualify for this invitational priority, the applicant must explicitly state and document, in its application,

that the project director or principal investigator is in the initial phase of his or her career. At least 50 percent of that individual's time must be devoted to the project.

(2) Projects focusing on technology-based approaches for children with disabilities, ages birth to age three.

(3) Projects focusing on technology-based approaches to response-to-intervention assessment techniques.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $30,949,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2009, of which we intend to use an estimated $2,400,000 for the Steppingstones of Technology Innovation for Children with Disabilities competition. Please refer to the ''Estimated Range of Awards'' column in the Chart for the estimated dollar amounts for the two phases of this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the lists of unfunded applicants from the competition.

Estimated Range of Awards: See Chart.

Estimated Average Size of Awards: See Chart.

Maximum Award: Phase 1: $200,000, per year and Phase 2: $300,000, per year. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register** .

Estimated Number of Awards: See Chart.

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months unless a compelling rationale is provided for funding up to 36 months.

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2009

CFDA No. and name	Deadline for transmittal of applications	Deadline for Intergovern-mental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.327A—Steppingstones of Technology Innovation for Children with Disabilities:						
Phase 1—Development	September 4, 2008.	November 3, 2008.	$1,200,000	$100,000–$200,000	$200,000	6
	September 4, 2008.	November 3, 2008.	.....	.....	.....	.....
Phase 2—Research on Effectiveness.	.....	.....	1,200,000	200,000–300,000	300,000	4

Note: The Department of Education is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327A.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

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. You must 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).

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; the two-page abstract, the resumes, the bibliography, the references, or the letters of support. The page limit, however, does apply to the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you use other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 21, 2008.

Deadline for Transmittal of Applications: See Chart.

Applications for grants under this program may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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: See Chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide *Grants.gov* Apply site. The Steppingstones of Technology Innovation for Children with Disabilities competition, CFDA Number 84.327A, is included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the Steppingstones of Technology Innovation for Children with Disabilities competition, CFDA Number 84.327A, at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327A).

Please note the following:

• Your participation in *Grants.gov* is voluntary.

• 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 competition 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 submit your application in paper format.

• If you submit your application electronically, 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).

• If you submit your application electronically, 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 4:30:00 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 4:30:00 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 4:30:00 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.327A), 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 84.327A), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.327A), 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 4:30:00 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

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for

which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award 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:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tom V. Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 4066, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7369.

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: July 15, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–16632 Filed 7–18–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.170A.

Dates:

Applications Available: July 21, 2008.

Deadline for Transmittal of Applications: September 4, 2008.

Deadline for Transmittal of the Free Application for Federal Student Aid (FAFSA): January 31, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Jacob K. Javits (JKJ) Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in specific fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: Creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: Art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folk life, foreign languages and literature, foreign languages that are less commonly taught as follows: Arabic, Chinese, Japanese, Korean, Russian, Indic family (including Hindi, Urdu, Sinhala, Bengali, Nepali, Punjabi, Marathi, Gujarati, Oriya, Assamese); Iranian family (including Dari, Farsi, Tajiki, Kurdish, Pashto, Balochi); and Turkic family (including Turkish, Azerbaijani/Azeri, Kazakh, Kyrgyz, Turkmen, Uzbek, Uyghur), history, linguistics, philosophy, religion (excluding study of religious vocation), speech, rhetoric, and debate. The selected fields in the social sciences are: Anthropology, communications and media, criminology, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Program Authority: 20 U.S.C. 1134–1134d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 650.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,861,599.

Estimated Average Size of Awards: $43,293.

Estimated Number of Awards: 43.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Individuals who at the time of application: (1) will be entering a doctoral program in academic year 2009–2010 or who, at the time of application, have not yet completed their first full year of study in the doctoral program for which they are seeking support; (2) will be entering a Master of Fine Arts program in academic year 2009–2010 in which the master's degree is the terminal highest degree awarded in the selected field of study; (3) are eligible to receive grant, loan, or work assistance pursuant to Section 484 of the Higher Education Act of 1965, as amended (HEA); and (4) intend to pursue a doctoral or master's degree in fields selected by the JKJ Fellowship Board at accredited U.S. institutions of higher education. To be eligible to receive a JKJ Fellowship, an individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Department. To obtain a copy via the Internet, use the following address for the JKJ Fellowship Program Web site: *http://www.ed.gov/programs/jacobjavits/index.html*. To obtain a copy from the Department, write, fax, or call the following: Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Programs Service, 1990 K St., NW., room 6089, Washington, DC 20006–8524. Telephone: (202) 502–7542 or by e-mail: *ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice.

Note: The FAFSA can be obtained from the institution of higher education's financial aid office or accessed at: *http://www.fafsa.ed.gov.*

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.

3. *Submission Dates and Times:*

Applications Available: July 21, 2008.

Deadline for Transmittal of Applications: September 4, 2008.

Deadline for Transmittal of the FAFSA: January 31, 2009.

Applications for grants under this program must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), 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 84.170A),
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 84.170A), 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.

b. *Submission of Applications by Hand Delivery.*

If you submit your application by hand delivery, you (or a courier service) must deliver the original and three 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 84.170A), 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 4:30:00 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 the CFDA Number, including suffix letter, 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

1. *Selection Criteria:* The selection criteria for this program are established by the JKJ Program Fellowship Board, pursuant to Section 702(a)(2) of the HEA and 34 CFR 650.20(a). The selection criteria for applications in the humanities and social sciences are: (a) Statement of purpose (150 points); (b) Letters of recommendation (100 points); (c) Academic record (100 points); and (d) Scholarly awards/honors (50 points). The selection criteria for applications in the arts are: (a) Statement of purpose (100 points); (b) Letters of recommendation (100 points); (c) Academic record (50 points); (d) Scholarly awards/honors (50 points); and (e) Supporting arts materials (100 points).

2. *Review and Selection Process:* The review and selection process for the JKJ Fellowship Program consists of a two-part process. Eligible applications are read and rated by a panel of distinguished scholars and academics in the arts, humanities, and social sciences on the basis of demonstrated scholarly achievements and exceptional promise. The second part of the evaluation is a determination of financial need.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify you by telephone and we will send a Grant Award Notice (GAN) directly to the institution you will be attending.

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 of 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:* On an annual basis, fellows must submit their Student Aid Report to the Javits Program Coordinator at their institution, as directed by the Secretary, pursuant to 34 CFR 650.37. In addition, Javits fellows are required to submit an annual performance report. The Department will contact fellows regarding the completion of the annual performance report.

4. *Performance Measures:* The effectiveness of the JKJ Fellowship Program will be measured by graduate completion rates, time-to-degree completion rates, and the costs per Ph.D or master's degree of talented graduate students with demonstrated financial need who are pursuing the highest degree available in their designated fields of study. Institutions of higher education in which the fellows are enrolled are required to submit an annual report documenting the fellows' satisfactory academic progress and the determined financial need. Javits fellows are also required to submit an annual performance report to assist program staff in tracking time-to-degree completion rates, graduation rates, as well as the employment status of individual fellows. The Department will use the reports to assess the program's success in assisting fellows in completing their course of study and receiving their degree.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Programs Service, 1990 K St., NW., Room 6089, Washington, DC 20006–8524. Telephone: (202) 502–7542 or e-mail: *ope_javits_program@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 may 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: July 15, 2008.

Sara Martinez Tucker,

Under Secretary of Education.

[FR Doc. E8–16630 Filed 7–18–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting and retreat.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, August 9, 2008, 8 a.m.–4:30 p.m.

ADDRESSES: Whitestone Country Inn, 1200 Paint Rock Road, Kingston, Tennessee 37763.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The planning retreat, which will be held from 8 a.m. to 4 p.m., will focus on establishing the work of the Board for Fiscal Year 2009. Election of officers for Fiscal Year 2009 will be the order of business during the regular monthly meeting, which will begin at 4 p.m.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a

fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on July 11, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–16596 Filed 7–18–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 13, 2008; 9 a.m. to 6 p.m. and Friday, November 14, 2008; 8:30 a.m. to 4 p.m.

ADDRESSES: DoubleTree Hotel, 1515 Rhode Island Ave, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following: Thursday, November 13, 2008, and Friday, November 14, 2008

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 *or John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the High Energy Physics Advisory Panel Web site. Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC on July 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–16590 Filed 7–18–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: August 13–14, 2008.

Times: August 13, 2008, 8:30 a.m.–5 p.m. MDT and August 14, 2008, 8:30 a.m.–Noon MDT.

Location: Sheraton Denver West Hotel, 360 Union Blvd., Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Discuss renewable energy programs at the National Renewable Energy Lab (NREL), discuss how STEAB can continue to support EERE's commercialization efforts, and update members on routine business matters. A copy of the agenda may be obtained by contacting Gary Burch, the DFO.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. The Public Comment Period will occur at 3 p.m. MDT on Wednesday, August 13, 2008.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on July 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–16593 Filed 7–18–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0352; FRL–8689–3]

Draft Risk and Exposure Assessment Report for Sulfur Dioxide (SO_2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft report for public review and comment.

SUMMARY: On or about July 3, 2008, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled ''Risk and Exposure Assessment to Support the Review of the SO_2 Primary National Ambient Air Quality Standards: First Draft.'' The purpose of this draft document is to convey the approach taken to assess exposures to ambient SO_2 and to characterize associated

health risks, as well as to present the results of those assessments.

DATES: Comments on the above reports must be received on or before August 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0352, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2007–0352.
- Fax: Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0352.
- Mail: Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0352.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0352. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Stewart, Office of Air Quality Planning and Standards (Mailcode C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *stewart.michael@epa.gov*; telephone: 919–541–7524; fax: 919–541–0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for the sulfur oxides (SO_x) and NAAQS have been established for sulfur dioxide (SO_2), an indicator for SO_x. Presently, EPA is reviewing the air quality criteria for SO_x and the NAAQS for SO_2. As part of its review of the NAAQS, EPA is preparing an assessment of exposures and characterization of health risks associated with ambient SO_2. A draft

plan describing the proposed approaches to assessing exposures and characterizing risks is described in the draft document, *Sulfur Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment.* This document was released for public review and comment in November 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on December 5 and 6, 2007. Comments received from that consultation have been considered in developing the draft risk and exposure assessment document being released at this time.

The draft document being released at this time conveys the approach taken to assess exposures to ambient SO_2 and to characterize associated health risks, as well as to present the results of those assessments. This draft document will be available online at: *http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_rea.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review on the draft document at an upcoming public meeting of the CASAC scheduled for July 30–31, 2008 in Research Triangle Park, NC. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a second draft risk and exposure assessment report. The release of the second draft report will be followed by another CASAC meeting which will be announced in a future **Federal Register** notice and ultimately EPA will release a final risk and exposure assessment document taking into consideration comments from the CASAC and public.

Dated: July 3, 2008.

Mary Henigen,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–16671 Filed 7–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8695–4]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

For information on access or services for individuals with disabilities, please contact Gloria Car, U.S. EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

DATES: The meeting will be held in conjunction with the Gulf of Mexico Alliance Implementation Workshop on Tuesday, August 19, 2008, from 9 a.m. to 5 p.m., Wednesday, August 20, 2008, from 9 a.m. to 5 p.m., and Thursday, August 21, 2008, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Omni Corpus Christi Hotel-Marina Tower, 707 North Shoreline Boulevard, Corpus Christi, Texas 78401.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Citizens Advisory Committee Overview, which includes the purposes, member responsibilities, bylaws, and a committee priority setting topic; GMP Program Update; CAC Participation in the Governors' Alliance and input on Action Plan II; Succession Planning to vote on a new slate of officers and to select alternates; discussions of meeting frequency, date of next meeting and future meeting topics, participation in Workshop Plenary Sessions and Priority Issue Team Meetings.

The meeting is open to the public.

Dated: July 14, 2008.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E8–16637 Filed 7–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8695–1]

Proposed CERCLA Administrative Cost Recovery Settlement; Old Village Mill, LLC, Brunswick Mill Site and Carvill Combing Company Site, Plainfield, CT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past costs concerning the Brunswick Mill Superfund Site and Carvill Combing Company Superfund Site in Plainfield, Connecticut with the following settling party: Old Village Mill, LLC. The settlement requires the settling party to pay $225,000.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue for the settling party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02114–2023.

DATES: Comments must be submitted on or before August 20, 2008.

ADDRESSES: Comments should be addressed to Mary Jane O'Donnell, Chief, ME/VT/CT Superfund Section, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023 (Telephone No. 617–918–1371) and should refer to: In re: Brunswick Mill Superfund Site and Carvill Combing Company Superfund Site, U.S. EPA Docket No. 01–2008–0029.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Mary Jane O'Donnell, Chief, ME/VT/CT Superfund Section, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023 (Telephone No. 617–918–1371; e-mail *odonnell.maryjane@epa.gov*).

Dated: April 17, 2008.

James T. Owens, III,

Director, Office of Site Remediation and Restoration.

[FR Doc. E8–16640 Filed 7–18–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 8, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Thomas McCudden, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–7769 or via Internet at *Thomas.McCudden@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0999.

OMB Approval Date: 7/2/08.

Expiration Date: 7/31/11.

Title: Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form No.: N/A.

Estimated Annual Burden: 925 respondents; 950 responses; 13.2 hours average burden per response; 12,600 annual burden hours.

Obligation to Respond: Required to obtain or retain benefits; Statutory authority for this collection of information is contained in Sections 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310.

Nature and Extent of Confidentiality: Information requested in the reports may include confidential information. However, covered entities would be allowed to request that such materials submitted to the Commission be withheld from public inspection. See 47 CFR 0.459.

Needs and Uses: The Commission is revising this IC because it has adopted final rules in a Report and Order, FCC 08–68, adopted on February 26, 2008, and released on February 28, 2008, which updates several of the performance benchmarks for the offering of hearing aid-compatible handset models by manufacturers and service providers of digital handsets used with public mobile services, institutes new requirements for manufacturers to refresh their product lines and for service providers to offer hearing aid-compatible handset models with differing levels of functionality, adopts a new version of the technical standard for measuring hearing aid compatibility, and addresses the application of the rules to phones that operate in multiple frequency bands or air interfaces.

To assist the Commission in monitoring the implementation of the new requirements and to provide information to the public, the Report and Order also requires manufacturers and service providers to continue to file annual reports on the status of their compliance with these requirements, and requires manufacturers and service providers that maintain public Web sites to publish up-to-date information on those Web sites regarding their hearing aid-compatible handset models. The annual reports required in this Order contain different and additional information than in previous versions of this information collection. Those requirements, along with the requirement to post certain information on Web sites, are intended to give consumers the information they need to navigate a technically complex and rapidly changing world of hearing aid-compatible wireless phones, and to allow the Commission to monitor compliance with its new regulations. Finally, in order to avoid potential consumer confusion over technical capabilities, the Order modified the product labeling requirements slightly.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16494 Filed 7–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 15, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Sections 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 19, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0526.

Title: Section 69.123, Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 17 respondents; 17 responses.

Estimated Time Per Response: 48 hours.

Obligation to Respond: Required to obtain or retain benefits. See 47 CFR Section 69.123.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 816 hours.

Annual Cost Burden: $13,175.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the

Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR Section 0.459.

Needs and Uses: The Commission requires Tier 1 local exchange carriers (LECs) to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection is operational. In the *Fifth Report and Order* in CC Docket No. 96–262, the Commission allows price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16613 Filed 7–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). 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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 19, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to PRA@fcc.gov and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Jerry Cowden at 202–418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0987.

Title: 911 Callback Capability; Non-initialized Handsets (47 CFR Sections 20.18(l)(1)(i–iii), 20.18(l)(2)(i–iii)).

Form Number: Not applicable.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 1,398 respondents; 226,398 responses.

Estimated Time per Response: 0.014457 hour (range of 30 seconds for labeling each handset to one hour for each respondent's public education effort).

Frequency of Response: Third-party disclosure.

Obligation to Respond: Mandatory. *See* 47 CFR Sections 20.18(l)(1)(i–iii), 20.18(l)(2)(i–iii).

Total Annual Burden: 3,273 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: In 2003, the Commission modified 47 CFR Section 20.18(l) to further improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from non-service initialized wireless mobile handsets. Non-service-initialized wireless mobile handsets (non-initialized handsets) are not registered for service with any Commercial Mobile Radio Service (CMRS) licensee. A non-initialized handset lacks a dialable number, but is programmed to make outgoing 911 calls. The Commission addressed issues arising from the inability of a PSAP operator to call back a 911 caller who becomes disconnected when using a non-service-initialized wireless handset. These requirements also apply to manufacturers of 911-only handsets that are manufactured after May 3, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16623 Filed 7–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York, to acquire fifty additional voting shares of 473 Broadway Holding Corporation and to acquire one thousand additional voting shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. LWCBancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Lincolnway Community Bank, both of New Lenox, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. BankCap Partners, Fund I, L.P.; BankCap Partners GP, L.P.; and BankCap Equity Fund, LLC, all of Dallas, Texas, to acquire 9.9 percent of the voting shares of TriState Capital Holdings, Inc., and thereby indirectly acquire voting shares of TriState Capital Bank, both of Pittsburgh, Pennsylvania.

Board of Governors of the Federal Reserve System, July 16, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–16615 Filed 7–18–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through October 31, 2011, the current OMB clearance for the information collection requirements pertaining to the Commission's administrative activities. That clearance expires on October 31, 2008, and consists of: (a) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) the FTC's program evaluation activities and; (d) the FTC's Applicant Background Form.

DATES: Comments must be filed by September 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Administrative Activities: FTC File No. P911409'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135, Annex J, 600 Pennsylvania Ave., NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted via the following weblink: (*https://secure.commentworks.com/ftc-adminactivities*). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-adminactivities*). If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nick Mastrocinque, Attorney; Edwin Acajabon, Program Manager, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., H-228, Washington, D.C. 20580, (202) 326-3188; (202) 326-3684.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501-3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements pertaining to the Commission's administrative activities (OMB Control Number 3084-0047).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 19, 2008.

The Commission's Administrative Activities clearance consists of: (a)

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) FTC program evaluation activities; and (d) the FTC's Applicant Background Form.

Estimated annual hours burden: 380,295 hours.

(a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice: 100 hours

Most applications to the Commission generally fall within the ''law enforcement'' exception to the PRA[2] and are mostly found in Part III (Rules of Practice for Adjudicative Proceedings) of the Commission's Rules of Practice. *See* 16 CFR 3.1-3.83. Nonetheless, there are various applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice). For example, staff estimates that the FTC annually receives approximately 15 requests for clearance submitted by former FTC employees in order to participate in certain matters and 5 screening affidavits submitted by partners or legal or business associates of former employees pursuant to Rule 4.1, 16 CFR 4.1.[3] There are also procedures set out in Rule 4.11(e) for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, in cases or matters to which the agency is not a party. Rule 4.11(e) requires that a person who seeks such testimony submit a statement in support of the request. Staff estimates that agency personnel receive approximately 1 request per month or 12 per year. Other types of applications and notices are either infrequent or difficult to quantify. Nonetheless, in order to cover any potential ''collection of information'' for which separate clearance has not been sought, staff conservatively projects the FTC will receive 50 applications or notices per year. Staff estimates each respondent will incur, on average, approximately 2 hours of burden to submit an application or notice, resulting in a cumulative annual total of 100 burden hours (50 applications or notices x 2 burden hours).

Annual cost burden:

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $425/hour for executives' and attorneys' wages, would be approximately $42,500 (100 hours x $425). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

(b) Complaint Systems: 379,728 hours

Consumer Response Center

Consumers can submit complaints about fraud and other practices to the FTC's Consumer Response Center by telephone or through the FTC's website. Telephone complaints and inquiries to the FTC are answered both by FTC staff and contractors. These telephone counselors ask for the same information that consumers would enter on the applicable forms available on the FTC's website. For telephone inquiries and complaints, the FTC staff retains its previous estimates that it takes 4.5 minutes per call to gather information, somewhat less time than the 5 minutes estimated for consumers to enter a complaint online. The burden estimate conservatively assumes that all of the phone call is devoted to collecting information from consumers, although frequently telephone counselors devote a small portion of the call to providing requested information to consumers.

Complaints Concerning the National Do Not Call Registry

To receive complaints from consumers of possible violations of the rules governing the National Do Not Call Registry, 16 CFR 310.4(b), the FTC maintains both an online form and a toll free hotline with automated voice response system. Consumer complainants must provide either the name *or* telephone number of the company about which they are complaining, the phone number that was called, and the date of the call. They may also provide their name and address so they can be contacted for additional information, as well as for a brief comment regarding their complaint. In addition, online complainants have the option of answering three yes-or-no questions to help law enforcement investigating complaints; this option will also soon be made available to phone complainants. The FTC staff estimates that the time required of consumer complainants is 3.5 minutes for phone complaints and 2.5 minutes for online complaints.[4]

Identity Theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. Identity theft complaints generally require more information (such as a description of actions complainants have taken with credit bureaus, companies, and law enforcement, and the identification of multiple suspects) than general consumer complaints and fraud complaints. In addition, the FTC has expanded the information required on its online complaint form (such as collecting additional information about the fraudulent activity at affected companies and creating an attachment summarizing all of the fraudulent account activity as well as all fraudulent information on the consumer's credit report). Consumers can print out a copy of the revised form and use it to assist them in completing a police report, if appropriate, and, as also may be necessary, an identity theft report. *See* 16 CFR 603.3 (defining the term ''identity theft report''). FTC staff continues to estimate that the revised online form takes consumers up to 13 minutes to complete.

The FTC also made some revisions in the information it collects from consumers who call the Consumer Response Center (''CRC'') with identity theft complaints. Moreover, in order to better serve consumers who are unable to file complaints online, staff will send those who call the CRC with identify theft complaints a blank complaint form (identical to the online printed form) to assist them with completing a police or identify theft report as appropriate. Staff estimates that it will take 14 minutes per call to obtain identity theft-related information.[5] A substantial portion of identity theft-related calls typically consists of counseling consumers on other steps they should consider taking to obtain relief (which may include directing consumers to a revised online complaint form). The time needed for counseling is excluded from the estimate.

Surveys

Consumer customer satisfaction surveys give the agency information about the overall effectiveness and

[2] The ''law enforcement'' exception to the PRA excludes most items in this subcategory because they involve collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceedings designed to determine fines or other penalties. *See* 44 U.S.C. 3518(c)(1); 5 CFR 1320.4(a)(1)-(3).

[3] Staff's estimates do not include Rule 4.1 submissions that pertain to ongoing law enforcement matters. *See supra* note 2.

[4] This is a slight increase from staff's 2005 estimates because of additional information collected, such as comments and three optional yes-or-no questions.

[5] This is a 5 minute increase from staff's 2005 estimate in order to account for the time it will take consumers to fill out the blank complaint form.

timeliness of the CRC. The CRC surveys roughly 1 percent of complainants who file identity theft or general consumer complaints. Subsets of consumers contacted throughout the year are questioned about specific aspects of CRC customer service. Each consumer surveyed is asked several questions chosen from a list prepared by staff. The questions are designed to elicit information from consumers about the overall effectiveness of the call center. Half of the questions ask consumers to rate CRC performance on a scale or require a yes-or-no response. The second half of the survey asks more open-ended questions seeking a short written or verbal answer. In addition, the CRC may survey a sample of consumers immediately after they file their complaints regarding the services they received. Staff retains its previous estimate that each respondent will require 4 minutes to answer the questions (approximately 20-30 seconds per question).

Finally, Consumer Sentinel user surveys give the agency information about the overall effectiveness of its Consumer Sentinel Network. Consumer Sentinel allows federal, state and local law enforcement organizations common access to a secure database containing over six million complaints from victims of consumer fraud and identity theft, as well as other complaints the FTC collects. To date, Consumer Sentinel has over 1,700 members, including law enforcement agencies from Canada and Australia. FTC staff plan to survey a sizeable number of Consumer Sentinel users each year about such things as overall satisfaction, performance, and possible improvements. Staff retains its previous estimate that the surveys should generally take approximately 10 minutes per respondent.

What follows are staff's estimates of burden for these various collections of information, including the surveys. The figures for the online forms and consumer hotlines are an average of annualized volume for the respective programs including both current and projected volumes over the 3-year clearance period sought and the number of respondents for each activity has been rounded to the nearest thousand.

Activity	# respondents	# minutes/activity	Total Hours
Misc. and fraud-related consumer complaints (phone)*	396,000	4.5	29,700
Misc. and fraud-related consumer complaints (online)**	520,000	5	43,333
Identity theft complaints (phone)*	385,700	14	89,997
Identity theft complaints (online)**	170,000	13	36,833
Do-Not-Call related consumer complaints (phone)	531,000	3.5	30,975
Do-Not-Call related consumer complaints (online)	3,548,000	2.5	147,833
Customer Satisfaction Questionnaire	9,600	4	640
Consumer Sentinel User Surveys	2,500	10	417
Totals	5,562,800		379,728

* Number of consumer calls calculated by projecting over the 3-year clearance period sought 5% annual growth and a telephone contractor response rate of 95% (contracted level of service) with regard to consumers who call the toll free lines and opt to talk to a counselor.

** Number of online collections projected from number of consumers who use the FTC's online complaint forms noted in the text above. These figures also assume 5% annual growth for miscellaneous and fraud-related complaints, and 8% annual growth for identity theft online complaints, over the 3-year clearance period requested.

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

(c) Program Evaluations: 175 hours

Review of Divestiture Orders

The Commission issues, on average, approximately 10-15 orders in merger cases per year that require divestitures. As a result of a 1999 study authorized by the OMB and conducted by the staffs of the Bureau of Competition (''BC'') and the Bureau of Economics,[6] BC monitors these required divestitures by interviewing representatives of the Commission-approved buyers of the divested assets within the first year after the divestiture is completed.

BC staff interviews representatives of the buyers to ask whether all assets required to be divested were, in fact, divested;[7] whether the buyer has used the divested assets to enter the market of concern to the Commission and, if so, the extent to which the buyer is participating in the market; whether the divestiture met the buyer's expectations; and whether the buyer believes the divestiture has been successful. In some cases, BC staff may also interview other participants, including customers or trustee monitors, as appropriate. In all these interviews, staff seeks to learn about pricing and other basic facts regarding competition in the markets of concern to the FTC.

Participation by the buyers is voluntary. Each responding company designates the company representative most likely to have the necessary information; typically, a company executive and a lawyer represents the company. Each interview takes approximately one hour to complete. BC staff further estimates that it takes each

[6] The Staff of the Bureau of Competition of the Federal Trade Commission compiled its findings from the study in its report: *A Study of the Commission's Divestiture Process,* 1999, available at (*http://www.ftc.gov/os/1999/08/divestiture.pdf.*)

[7] To the extent that the staff interviews focus on a law enforcement activity (whether the party to the order complied with all its obligations), the interviews are not subject to the requirements of the PRA. *See supra* note 2.

participant no more than one hour to prepare for the interview. In some instances, staff may do additional interviews with customers of the responding company or the monitor. Staff conservatively estimates that for each interview, two individuals (a company executive and a lawyer) will devote two hours (one hour preparing and one hour participating) each to responding to questions for a total of four hours. In addition, for approximately half of the divestitures, staff will seek to question two additional respondents, adding four participants (a company executive and a lawyer for each of the two additional respondents) devoting two hours each, for a total of eight additional hours. Assuming that staff evaluates up to 20 divestitures per year during the three-year clearance period, the total hours burden for the responding companies will be approximately 160 hours per year ((20 divestiture reviews x 4 hours for preparing and participating) + (10 divestiture reviews x 8 hours for preparing and participating)).

Annual cost burden:

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $425/hour for executives' and attorneys' wages, would be approximately $68,000 (160 hours x $425). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Review of Competition Advocacy Program

The FTC's competition advocacy program draws on the Commission's expertise in competition and consumer protection matters to encourage federal and state legislators, courts and other state and federal agencies to consider the competitive effects of their proposed actions. The FTC Office of Policy Planning (''OPP'') sends approximately 20 letters or written comments to different state and federal government officials annually, which provide guidance on the likely competitive effects of various laws or regulations.

In the past, OPP has evaluated the effectiveness of these advocacy comments by surveying comment recipients and other relevant decision makers. OPP intends to continue this evaluation by sending a written questionnaire to relevant parties between six and nine months after an advocacy comment is sent. Most of the questions ask the respondent to agree or disagree with a statement concerning the advocacy comment that they received. Specifically, these questions inquire as to the applicability, value, persuasive influence, public effect, and informative value of the FTC's comments. The questionnaire also provides respondents with an opportunity to provide additional remarks related either to the written comments received or the FTC's advocacy program in general. Participation is voluntary.

OPP staff estimates that on average, respondents will take 30 minutes or less to complete the questionnaire and 15 minutes of administrative time to prepare the response for mailing. Accordingly, staff estimates that each respondent will incur 45 minutes of burden resulting in a cumulative total of 15 burden hours per year (45 minutes of burden per respondent x 20 respondents per year). OPP staff does not intend to conduct any follow-up activities that would involve the respondents' participation.

Annual cost burden:

OPP staff estimates a conservative hourly labor cost of $100 for the time of the survey participants (primarily state representatives and senators) and an hourly labor cost of $16 for administrative support time. Thus, staff estimates a total labor cost of $54 for each response (30 minutes of burden at $100 per hour plus 15 minutes of burden at $16 per hour). Assuming 20 respondents will complete the questionnaire on an annual basis, staff estimates the total annual labor costs will be approximately $1,080 ($54 per response x 20 respondents). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

(d) Applicant Tracking Form: 292 hours

The FTC's Human Resources Management Office surveys job applicants on their ethnicity, race, and disability status in order to determine if recruitment is effectively reaching all aspects of the relevant labor pool, in compliance with management directives from the Equal Opportunity Employment Commission. Response by applicants is optional. The information obtained is used for evaluating recruitment only and plays no part in the selection of who is hired. The information is not provided to selecting officials. Instead, the information is used in summary form to determine trends over many selections within a given occupational or organizational area. The information is treated in a confidential manner. No information from the form is entered into the official personnel file of the individual selected and all forms are destroyed after the conclusion of the selection process. The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other agencies.

Based upon past activity, the FTC staff estimates that up to 7,000 applicants will submit the form as part of the new online application process and that the form will require approximately 2.5 minutes to complete, for an annual burden total of approximately 292 hours (7000 applicants x 2.5 minutes to complete the form).

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

William Blumenthal,

General Counsel.

[FR Doc. E8–16508 Filed 7–18–08: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0079]

Flow International Corporation; Analysis of the Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 8, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Flow International, File No. 081 0079,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments

containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at *http://secure.commentworks.com/ftc-Flow*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Charles Harwood or Joseph Lipinsky, FTC Northwest Regional Office, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (206) 220-6350.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 10, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/07/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Flow International Corporation (''Flow''). The proposed Consent Agreement is designed to remedy the likely anticompetitive effects arising from Flow's proposed acquisition of OMAX Corporation (''OMAX''). Under the terms of the Consent Agreement, Flow will grant a royalty-free license to two Omax patents relating to waterjet controllers to any firm that seeks a license.

II. Background

Flow and OMAX are the leading manufacturers of waterjet cutting systems in the United States. Waterjet cutting systems use high pressure water and garnet to cut a wide variety of materials from steel to stone. The two companies have developed PC-based controllers that automatically compensate for the unique characteristics of how the waterjet cuts, such as taper (the waterjet expands after leaving the nozzle, forming a cone shape) and lag (the faster the cutting head moves, the more the waterjet will trail behind the cut). The controllers and related technology differentiate these two firms from other competitors in the marketplace. However, the controllers and related technology are also the subject of ongoing litigation between the two companies. In 2004, OMAX filed suit alleging that Flow's products infringed its patents pertaining to controllers. Flow counterclaimed alleging that OMAX infringed its patents pertaining to controllers.

Flow, a publicly traded company headquartered in Kent, Washington, is the leading manufacturer of waterjet cutting systems in the United States market. OMAX is a privately-held company headquartered in Kent, Washington. OMAX owns two very broad U.S. patents covering its controller. OMAX's controller is a significant factor behind its position as the second leading supplier of waterjet cutting systems in the United States.

On December 5, 2007, Flow signed an exclusive option agreement to negotiate the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow would pay approximately $109 million in cash and stock with the potential for a contingent earn-out in two years of up to $26 million. The closing will also settle the long-running and expensive patent litigation between Flow and OMAX.

III. The Draft Complaint

The draft complaint alleges that the transaction may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems. A waterjet cutting system contains four main parts: (1) Pump, (2) cutting head, (3) cutting table, and (4) controller.

Waterjet cutting systems are used by a wide variety of industrial machine tool customers. These customers range from job shops, which produce a wide variety of short-run parts, and use waterjet cutting systems to complement their traditional milling machines, lasers and flame cutters, to aerospace shops that use waterjet cutting systems because they cut without damaging materials that are affected by heat, such as titanium and aluminum. Industrial machine tool customers, as well as others, can increase cutting speed and minimize set-up time by using a waterjet cutting system instead of an alternative cutting technology. Cutting speed is affected by pump pressure, the number of cutting heads used on the system, and the sophistication of the controller. Controllers are often the least expensive means of improving cutting speed and have the further virtue of reducing set-up time if they are easily programmable. To compensate for the unique characteristics of how the waterjet cuts, controllers can improve the quality of the cut by, among other things, automatically adjusting the speed of the cut.

Both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers that compensate for the unique characteristics of how the waterjet cuts. These controllers make Flow and OMAX each other's closest

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

competitors because only they manufacture waterjet cutting systems with the most advanced and efficient controllers.

The relevant geographic market within which to analyze the likely effects of the proposed transaction is the United States. The draft complaint further alleges that new entry would not prevent or counteract the anticompetitive effects of this acquisition. New entrants and existing competitors are deterred by the risk of violating the OMAX patents from developing and producing competitive waterjet cutting systems. Developing an efficient controller that clearly works-around the potential reach of OMAX's patents would likely be an expensive and time-consuming process, with no guarantee of success.

The draft complaint also alleges that Flow's acquisition of OMAX, if consummated, may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating direct competition between Flow and OMAX and increasing the likelihood that Flow will unilaterally exercise market power.

IV. The Terms of the Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Flow must grant a royalty-free license to each competitor who seeks to license the two broad OMAX patents relating to controllers that Flow will acquire with its acquisition of OMAX.

Currently Flow and OMAX are each other's closest competitor because they each offer an efficient PC-based controller that compensates for the unique characteristics of how a waterjet cuts. OMAX's two patents make the development of such a controller substantially more expensive and risky. Requiring Flow to grant a royalty-free license to these patents will ensure that other firms are able to replace the competition that would otherwise have been eliminated by the proposed acquisition.

While Flow has two patents relating to controllers, its patents are significantly narrower in scope than the OMAX patents and, as a result, do not prevent current or future competitors from offering a viable waterjet cutting system. Current and future competitors will not need licenses to these narrow patents in order to compete effectively in this market. Other aspects of Flow's and OMAX's business, such as customer lists, brand names, key employees, or the other parts of waterjet cutting systems, are easily duplicated by current competitors or future entrants. Consequently, to restore the competition lost by Flow's acquisition of OMAX, the proposed consent order eliminates the entry barrier faced by current waterjet cutting system competitors and future entrants by giving them a royalty-free license to the OMAX patents.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–16506 Filed 7–18–08: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Brookhaven National Laboratory, Upton, NY, to be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Brookhaven National Laboratory, Upton, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Brookhaven National Laboratory.

Location: Upton, New York.

Job Titles and/or Job Duties: All workers.

Period of Employment: January 1, 1947 through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–800–CDC–INFO (1–800–232–4636) or directly at 1–513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: June 30, 2008.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E8–16606 Filed 7–18–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Kellex/Pierpont facility in Jersey City, New Jersey, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On May 30, 2008, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer (AWE) employees who worked at the Kellex/Pierpont facility in Jersey City, New Jersey, from January 1, 1943, through December 31, 1953, for a number of work days aggregating at least 250 work days occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on June 29, 2008, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on June 29, 2008, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–800–CDC-INFO (1–800–232–4636) or directly at 1–513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: July 2, 2008.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E8–16607 Filed 7–18–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3189–NC]

RIN 0938–AP36

Medicare Program; Evaluation Criteria and Standards for Quality Improvement Program Contracts (9th Scope of Work)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period describes the general criteria we intend to use to evaluate the efficiency and effectiveness of the Quality Improvement Organizations (QIOs) who will enter into contract with CMS under the 9th SOW on August 1, 2008. The evaluation of the QIOs' performance related to their Statement of Work (SOW) will be based on evaluation criteria specified within the themes, tasks, and subtasks set forth in the QIO's 9th SOW.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 20, 2008.

ADDRESSES: In commenting, please refer to file code CMS–3189–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3189–NC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3189–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses.

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Pamon (410) 786–9167.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 1153(h)(2) of the Act requires the Secretary to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the efficient and effective performance of contract obligations by QIOs and to provide the opportunity for public comment with respect to such criteria and standards. This notice describes the general criteria that will be used to evaluate QIO performance under the 9th SOW contract beginning in August 2008.

II. Themes, Tasks, Subtasks Description

Under the 9th SOW, QIOs are responsible for completing the requirements for the following themes: Beneficiary Protection, Patient Safety, Prevention and Care Transitions. (Detailed information for each theme may be found in Sections C.6. and C.7. Theme Requirements of the 9th SOW posted at the *www.fedbizopps.gov* Web site. On the home page of the Web site, type ''QIO'' into ''Quick Search'' and click on ''GO'' to view the RFP under solicitation numbers ''9thSOWInStateQIOs–NAHC'' and ''CMS–2007–QIO9thSOW–NAHC'').

Beneficiary Protection (See Section C.6.1. of the 9th Statement of Work)

Beneficiary Protection activities will emphasize statutory and regulatory

mandated review activity and quality improvement. Primary case review categories include utilization review, quality of care review, review of beneficiary appeals of certain provider notices, and reviews of potential anti-dumping cases. Quality of care review includes the review of beneficiary complaints. In conducting reviews of beneficiary complaints, the QIO shall utilize a number of tools intended to address the beneficiary's concerns, including implementation of quality improvement activities (QIAs), surveying of beneficiary satisfaction with the complaint process, and, if appropriate, alternative dispute resolution mechanisms. The Tasks under this theme will focus on conducting activities to meet, in an efficient and effective manner, regulatory and statutory requirements, to enhance QIO collaboration with the Beneficiary Complaint Survey Contractor, Fiscal Intermediaries (FIs), Carriers, Medicare Administrative Contractors (MACs), State Survey Agencies (SSAs), the Office of Inspector General (OIG), and the Medicare Office of Hearings and Appeals and to clearly establish the link between case review and quality improvement through data analysis and improvement assistance.

Patient Safety (See Section C.6.2. of the 9th Statement of Work)

QIO activities under the Patient Safety Theme will focus on six components: Improving inpatient surgical safety and heart failure (SCIP/HF), reducing rates of pressure ulcers (PrU-Nursing Homes and Hospitals), reducing rates of and use of physical restraints (PR), improving drug safety, reducing rates of healthcare associated Methicillin-resistant Staphylococcus aureus (MRSA) infections and activities aimed at nursing homes in need (NHIN). The requirements of the Patient Safety Theme are designed to address areas of patient harm for which there is evidence of how to improve safety by improving health care processes and systems.

Prevention (See Section C.6.3. of the 9th Statement of Work)

The Prevention Theme contains two cancer screening tasks (breast cancer and colorectal cancer (CRC)), two immunization tasks (influenza and pneumococcal) and Tasks on disparities related to diabetes self-management and chronic kidney disease (CKD) prevention.

Sub-National Theme Requirements

Prevention: Disparities (Directed Sub-National Task, See Section C.7.1. of the 9th Statement of Work)

Under this Theme, the QIO will work with practice sites and other organizations in its state/jurisdiction to improve diabetes measures within underserved populations. QIO Disparities work includes tasks related to Diabetes Self-Management Education. Diabetes Self-Management Education (DSME) is an approach that has been demonstrated to be effective in improving diabetes clinical outcomes and other related health dimensions. DSME is an intervention in itself for diabetes behavior and outcomes improvement. The QIO will facilitate training of appropriate personnel at organizational sites using evidence-based CMS-approved DSME programs within the underserved population of the qualified physician practices. The QIO will establish a partnership with the primary care physician, certified diabetes educators and community health workers to facilitate the accessibility of DSME services to patients. This task is directed and will be limited to a sub-set of States with sufficient underserved Medicare diabetes populations, as determined by CMS. See section C.7.1 of the 9th SOW for the list of the 33 states eligible for this task.

Care Transitions (Optional Sub-National Theme, See Section C.7.2. of the 9th Statement of Work)

The QIO work under the Care Transitions Theme aims to measurably improve the quality of care for Medicare beneficiaries who transition among care settings through a comprehensive community effort. These efforts aim to reduce readmissions following hospitalizations and to yield sustainable and replicable strategies to achieve high-value health care for sick and disabled Medicare beneficiaries.

Prevention: Chronic Kidney Disease (Optional Sub-National Task, See Section C.7.3 of the 9th Statement of Work)

The goal of this Task is to detect the incidence and decrease the progression of chronic kidney disease (CKD) and improve care among Medicare beneficiaries through provider adoption of timely and effective quality of care interventions; participation in quality incentive initiatives; beneficiary education; and key linkages and collaborations for system change at the state and local level.

In addition to improving the quality of care for the elderly and frail-elderly, this Task aims to reduce the rate of Medicare entitlement by disability through the delay and prevention of ESRD.

The focus areas for quality improvement in CKD include: Timely testing to detect the rate of kidney failure due to diabetes; slowing the progression of disease in individuals with diabetes through the use of ACE (angiotensin converting enzyme) inhibitors and/or an angiotensin receptor blocking (ARB) agent; and arteriovenous fistula (AV fistula) placement and maturation (as a first choice for arteriovenous access where medically appropriate) for individuals who elect, as a part of timely renal replacement therapy counseling, hemodialysis as their treatment option for kidney failure.

III. Measuring QIO Performance

Overall Contract Evaluation (See Section C.5 of the 9th SOW posted at *www.fedbizops.gov* for more detailed overall contract evaluation criteria. On the *www.fedbizopps.gov* home page, type ''QIO'' into ''Quick Search'' and click on ''GO'' to view the RFP under solicitation numbers ''9thSOWInStateQIOs–NAHC'' and ''CMS–2007–QIO9thSOW–NAHC'').

Under the 9th SOW, the QIO's performance in undertaking activities to carry out the requirements of each of the Themes (Beneficiary Protection, Care Transitions, Patient Safety and Prevention) and components within those Themes will be used to determine the QIO's success or failure in meeting the overall evaluation criteria as specified below. The QIO shall be evaluated on the Themes and components under the Themes required under the contract. If a QIO is not tasked to work on a Theme or a specific component under the Theme, the QIO will not be evaluated under that particular Theme or component. Any Special Project (SP) that the QIO may carry out will be evaluated separately and will not be considered in the overall evaluation criteria.

There will be two periods of evaluation under the 9th SOW. The first evaluation will focus on the QIO's work in three Theme areas (Care Transitions, Patient Safety, and Prevention) and will occur at the end of 18 months using the most recent data available to CMS. The second evaluation will examine the QIO's performance on Tasks within all Theme areas (Beneficiary Protection, Care Transitions, Patient Safety, and Prevention). The second evaluation will take place at the end of the 28th month

of the contract term and will be based on the most recent data available to CMS. The performance results of the evaluation at both time periods (that is, at 18 months and at 28 months) will be used to determine the performance on the overall contract.

The first contract evaluation will determine if the QIO has met the performance criteria in the Theme areas of Care Transitions, Patient Safety, and Prevention and in the components within those Themes. The Themes or components within the Theme as appropriate will be evaluated on an individual basis with the determination relative to only that area.

The second contract evaluation will determine if the QIO has met the performance criteria in all Theme areas of Beneficiary Protection, Care Transitions, Patient Safety and Prevention, and in the components within those Themes. The performance on the Beneficiary Protection Theme will cover the 28-month contract period.

The results of the first and second evaluations at the end of the 18 and 28 month periods will be used to determine how the contractor performed on the overall contract in total.

18-Month Evaluation Criteria (by Theme or component of the Theme excluding Beneficiary Protection)

- Pass = Criteria met and CMS may elect the option to continue the work (and funding) of the Theme or component of the Theme where appropriate.
- Fail = Criteria not met and we may, among other remedies, elect NOT to continue the work (or funding) for the Theme or component of the Theme where appropriate for the contract duration.

28-Month Evaluation Criteria (by Theme or component of the Theme including Beneficiary Protection for the 28-month contract period)

- Pass = Criteria met for Theme or component of the Theme where appropriate.
- Fail = Criteria not met for Theme or component of the Theme where appropriate.

Overall Contract Performance

- Pass = Pass on all Themes and components within the Theme at both evaluation periods.
- Fail = Fail any Theme or component within the Theme in either evaluation period.

If CMS chooses, we may notify the QIO of the intention not to renew the QIO contract, and inform the QIO of the QIO's rights under the then current statute.

The specific evaluation criteria are described below for each Theme or component within a Theme as appropriate. In general, for areas of work that have been performed under the 8th SOW or other recent QIO SOW where historical data is available for analysis, the acceptable performance expectation is a specific target or tighter target range than for areas of work that have not been in previous SOWs and where the experience under a previous SOW demonstrated that there was a range for acceptable performance. For the purpose of determining scores for all Themes, components within a Theme, or measures within a Theme, all percentages will be rounded to two places (with the value at or above five in the thousands position (for example, .005, .015, etc. rounded up).

Beneficiary Protection

- Pass = 90% of Target
- Fail = <90%

Patient Safety: Surgical Care Improvement Project/Heart Failure (SCIP/HF), Pressure Ulcers and Physical Restraints

- Pass = 70–100% of Target
- Fail = <70%

Patient Safety: Methicillin Resistant Staphylococcus Aureus (MRSA)

- Pass = 70–100% of Target
- Fail = <70%

Patient Safety: Drug Safety, Nursing Homes In Need (NHIN)

- Pass = 70–100% of Target
- Fail = <70%

Prevention: Cancer Screening, Mammograms, and Immunizations

- Pass = 100% of Target
- Fail = <100%

Prevention: Disparities

- Pass = 80% of Target
- Fail = <80%

Care Transitions

- Pass = 100%–80% of Target
- Fail = <80%

Prevention: Chronic Kidney Disease (CKD)

- Pass = 100%–80% of Target
- Fail = <80%

The list of measures and performance criteria for each QIO will be recorded on the CMS Dashboard, which will be available on QIOnet (*http://qionet.sdps.org*), the standard information system that supports the QIO Program. We will also post these measures on our publicly accessible Web site (*http://www.cms.gov*).

We will monitor the QIO's performance on Themes, components within the Themes and measures within Themes against established criteria on a quarterly basis, and may take appropriate contract action (for example, providing warning for the need for adjustment, instituting a formal correction plan, terminating an activity, or recommending early termination of a contract because of failure to meet contract timelines).

CMS reserves the right at any point prior to the notification of our intention not to continue the option for a Theme and/or to renew the contract to adjust the expected minimum thresholds for satisfactory performance or remove criteria from a Theme or Theme component evaluation protocol for any reason, including, but not limited to, data gathered based on experience with the amount of improvement achieved during the contract cycle or in pilot projects currently in progress, information gathered through evaluation of the QIO Program overall, or any unforeseen circumstances. Further, in accordance with standard contract procedures, we reserve the right at any time to discontinue a Theme or a component of a Theme regardless of QIO performance on the Theme or component of the Theme.

IV. Standards for Minimum Contract Performance Within a Theme

Beneficiary Protection Contract Evaluation (See Sections C.5 and C.6.1. of the 9th SOW)

CMS will evaluate, on a quarterly basis, achievement of minimum performance thresholds on timeliness of review activities, beneficiary satisfaction with the complaint process, beneficiary satisfaction generally and quality improvement activities. Additionally, CMS will evaluate system-wide change improvement activities and PPS inpatient hospital data reporting.

Patient Safety (See Sections C.5 and C.6.2. of the 9th SOW)

CMS will evaluate achievement of minimum performance thresholds on specific clinical measures at the 18th and 28th month evaluation periods. CMS will evaluate improvements in the SCIP (surgical care improvement program) measures, MRSA (methicillin Resistant Staphylococcus Aureus) hospital measures, PrU (pressure ulcers) in hospitals and nursing homes and PR (physical restraints) in nursing homes, and prescription drug safety measures.

CMS will also evaluate work and improvement with a small number of poorly performing nursing homes. CMS will evaluate the nursing homes' perception of the effectiveness of QIO technical assistance and on improvement in the quality measures.

Prevention (See Sections C.5 and C.6.3. of the 9th SOW)

CMS will evaluate achievement of minimum performance thresholds on specific clinical measures at the 18th and 28th month evaluation periods. CMS will evaluate the work with a selected group of participating practices (PPs) in its state/jurisdiction with already implemented electronic health records (EHRs) to assess improvements in breast cancer and CRC screening rates and to improvements in immunization rates for influenza and pneumococcal pneumonia among Medicare beneficiaries.

Sub-National Theme Requirements Prevention: Disparities (Directed Sub-National Task, See Sections C.5 and C.7.1. of the 9th SOW

CMS will evaluate achievement of minimum performance thresholds on specific measures on a quarterly basis and at the 18th and 28th month evaluation periods. CMS will evaluate recruitment of targeted providers and enrollment of targeted patients. CMS will also evaluate improvements in the rates for hemoglobin A1c testing, eye exams, lipid testing and blood pressure control for diabetic patients.

Care Transitions, (Optional Sub-National Theme, See Sections C.5 and C.7.2. of the 9th SOW)

CMS will evaluate achievement of minimum performance thresholds on specific clinical measures at the 18th and 28th month evaluation periods. CMS will evaluate patient care transitions that are: attributable to participating providers; related to implementation of interventions that address hospital/community system-wide processes; the potential subject of an implemented intervention that addresses acute myocardial infarction, congestive heart failure, and pneumonia; the potential subject of an implemented intervention that addresses specific reasons for readmission. CMS will also evaluate the percentage of implemented interventions that are measured and the percentage of patient care transitions to which implemented and measured interventions apply and show improvement. CMS will also evaluate patient satisfaction and patient readmission rates.

Prevention: Chronic Kidney Disease (Optional Sub-National Task, See Sections C.5 and C.7.3 of the 9th SOW)

CMS will evaluate achievement of minimum performance thresholds on all clinical outcome measures at the 18th and 28th month evaluation periods. CMS will evaluate timely testing to reduce the rate of kidney failure due to diabetes, improvement in the use of ACE inhibitor and/or ARB agent, and improvement in the rate of AV fistula placement.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: April 25, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–16757 Filed 7–18–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Quarterly Case Record Report—ACF–801.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801. With this extension, ACF is proposing several changes and clarifications to the reporting requirements and instructions.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	20	4,480

Estimated Total Annual Burden Hours: 4,480.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370

L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 16, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–16616 Filed 7–18–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Food and Drug Administration Critical Path Workshop on Clinical Trials for Local Treatment of Breast Cancer by Thermal Ablation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the issues associated with the development and implementation of feasibility trials for local treatment of breast cancer by thermal ablation (i.e., cryoablation, focused ultrasound, interstitial laser, microwave, radiofrequency ablation). We are inviting individuals, companies, organizations, and other stakeholders to attend this public workshop to discuss how standardized protocols for evaluation of tissue biopsy pathology, selection of tumors amenable to ablation, image guidance for ablation, post-ablation imaging and assessment, and tissue pathology of ablated specimens can be developed and used in breast cancer thermal ablation clinical trials. The public workshop will also serve as a forum for discussing where within the multispecialty care path involving operative therapy, chemotherapy, and radiation therapy, thermal ablation may play a role.

Date and Time: The public workshop will be held on September 15, 2008, from 9 a.m. to 6 p.m. Online registration is available at *http://www.blsmeetings.net/2008ThermalAblationWorkshop* until 5 p.m. on August 30, 2008 (see section III of this document for details).

Location: The public workshop will be held at the FDA White Oak Campus, conference rooms 2047 F and G (*http://grouper.ieee.org/groups/scc34/sc2/meeting_info/Meeting_WhiteOak_15-18OCT2007/White_Oak_Campus_Info_2007.pdf*) located at 10903 New Hampshire Ave., Silver Spring, MD 20993.

Contact: Binita Ashar, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3600, e-mail: *Binita.Ashar@FDA.HHS.gov.*

If you need special accommodations due to a disability, please contact Paula Gumbs at 301–594–4453 at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Background

On July 24, 2003, the FDA's General and Plastic Surgery Devices Advisory Panel discussed issues pertaining to the use of thermal ablation devices to percutaneously or non-invasively treat breast cancer by causing coagulation necrosis of the tumor. The panel discussed clinical trial issues pertaining to the local treatment of breast cancer using thermal ablation versus operative resection.

The panel addressed the following issues: (1) The level of evidence that would be required, in initial studies of treatment of primary breast cancer by minimally invasive ablation followed by immediate lumpectomy for pathologic examination of margins (i.e., feasibility ablate and resect studies), to permit initiation of studies that use minimally invasive ablation to definitively treat the cancer without followup resection (i.e., ablate and follow studies); (2) the type of pivotal study that could demonstrate the efficacy of a thermal ablation device to provide local breast cancer treatment in lieu of lumpectomy; (3) how to mitigate concerns regarding the effect of thermal ablation on surrounding breast tissue and radio/chemosensitivity; and (4) the limitations of breast imaging and its effect on patient selection and treatment followup. This panel's discussion of these issues has significantly contributed to FDA's evaluation of these technologies.

Investigators studying the feasibility of thermal ablation devices for the treatment of breast cancers have refined their techniques. In fact, there have been small studies demonstrating nearly 100 percent ablation accuracy. Unfortunately, the lack of uniformity among different feasibility study protocols has resulted in various study results that cannot be easily compared. Uniformity with respect to standardized evaluation of tissue biopsy pathology, selection of tumors amenable to ablation, image guidance for ablation, timing of ablation (with respect to lymph node biopsy, radiation therapy and chemotherapy), post-ablation imaging and assessment, and tissue pathology of ablated specimens would facilitate the assembly of results across both studies and ablation modalities and better allow the formulation of science-based hypotheses regarding best practices for breast cancer ablation therapy. The purpose of this critical path effort is to motivate the breast cancer ablation industry to standardize its feasibility study protocols so that data emerging are comparable in all respects except for the specific ablation modality. Such data could be used to create a validated imaging tool that correlates pathological results with imaging findings of an ablated breast cancer and hypothesize best practices that could potentially serve as the basis for longitudinal prospective clinical trials.

We believe that there may be a variety of opinions and experiences regarding the information required to obtain uniformity with respect to standardized evaluation of tissue biopsy pathology, selection of tumors amenable to ablation, image guidance for ablation, timing of ablation (with respect to lymph node biopsy, radiation therapy and chemotherapy), post-ablation imaging and assessment, and tissue pathology of ablated specimens to facilitate the assembly of results across both studies and ablation modalities and better allow the formulation of science-based hypotheses regarding best practices for breast cancer ablation therapy. We therefore published a notice in the **Federal Register** of May 28, 2008 (73 FR 30619) (*http://www.access.gpo.gov*) requesting comments by November 24, 2008, to help the agency understand how a potential registry of breast cancer treatment using thermal ablation devices may motivate this effort.

II. Agenda

The purpose of the public workshop is to discuss the development and implementation of a rational, standardized approach for conducting feasibility trials (i.e., ablate and resect trials) examining thermal ablation of breast cancer as part of the treatment care path for patients with breast cancer. Representatives from various areas involved with the development, testing, and use of thermal ablation devices for breast cancer have been invited. There will be focused sessions, addressing the key issues of breast cancer thermal ablation treatment related to imaging, pathology, operative resection and axillary staging, chemotherapy and radiation therapy.

Participation in the workshop is open to both invited participants and audience members. The invited participants include medical experts from various specialties involved in the care of patients with breast cancer and use of thermal ablation devices. Invited participants will have completed a work assignment in advance of the public workshop in order to optimize the time spent during the public workshop. Audience participation is open to all who are interested in clinical trials for local treatment of breast cancer by thermal ablation and will be scheduled throughout the sessions.

The agenda for this public workshop is available on the Internet at *http://www.blsmeetings.net/2008ThermalAblationWorkshop.*

III. Registration

Those interested in attending may register online at *http://www.blsmeetings.net/2008ThermalAblationWorkshop*. There is no registration fee to attend the public workshop, however all participants must submit a registration form. Space is limited, so please submit your registration early to reserve a space. Registrations will be accepted through August 30, 2008; however, onsite registration will be permitted on a space-available basis.

Persons without Internet access may call Paula Gumb at 301–577–0244, ext. 25 by September 12, 2008, to register for onsite workshop attendance.

IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at either *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* or *http://www.blsmeetings.net/2008ThermalAblationWorkshop*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: July 11, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–16638 Filed 7–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Ancillary Studies in Clinical Trials.

Date: August 14, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190 Bethesda, MD 20892, 301–435–0287, *carolko@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Projects in Lung Diseases.

Date: August 14, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–16407 Filed 7–18–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Aging In Adults With Down Syndrome''.

Date: August 14, 2008

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development. NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Changes In Functioning Among Mentally Retarded Adults''.

Date: August 14, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, *(301) 496–1485, changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–16408 Filed 7–18–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Interagency School Readiness Consortium.

Date: August 12, 2008.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5b01, Bethesda, MD 20892, (301) 435–6911. *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–16522 Filed 7–18–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3287–EM]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3287–EM), dated June 28, 2008, and related determinations.

DATES: *Effective Date:* June 28, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 28, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from wildfires beginning on June 20, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Butte, Mendocino, Monterey, Santa Clara, Santa Cruz, Shasta, and Trinity Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16548 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3287–EM]

California; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3287–EM), dated June 28, 2008, and related determinations.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 28, 2008.

Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties for emergency protective measures, (Category B), including direct Federal assistance, under the Public Assistance program, for a period of up to 60 days beginning on June 20, 2008, and ending on August 20, 2008, or the close of the incident period, whichever occurs first.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16558 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1776–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1776–DR), dated July 9, 2008, and related determinations.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, flooding, and tornadoes during the period of May 22 to June 16, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Kansas have been designated as adversely affected by this declared major disaster:

Barber, Bourbon, Brown, Butler, Chautauqua, Cherokee, Clark, Clay, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Ellis, Franklin, Gove, Graham, Harper, Hodgeman, Jackson, Jewell, Kiowa, Linn, Logan, Mitchell, Montgomery, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Republic, Riley, Rooks, Rush, Saline, Seward, Sheridan, Smith, Stafford, Sumner, Thomas, Trego, and Wallace Counties for Public Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16555 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1775–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1775–DR), dated July 9, 2008, and related determinations.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms and flooding during the period of June 3–20, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justin A. Dombrowski, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared major disaster:

The counties of Alfalfa, Beaver, Beckham, Blaine, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Harmon, Harper, Jackson, Kay, Kiowa, Major, Okfuskee, Osage, Ottawa, Roger Mills, Rogers, Tillman, Washita, and Woods for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16556 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1774–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1774–DR), dated July 9, 2008, and related determinations.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding during the period of June 2–12, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tony Russell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this declared major disaster:

The counties of Aurora, Bon Homme, Brule, Buffalo, Butte, Charles Mix, Clay, Dewey, Douglas, Gregory, Haakon, Hand, Hanson, Hughes, Hutchinson, Jackson, Lawrence, Lyman McCook, Meade, Mellette, Moody, Perkins, Stanley, Tripp, Turner, and Ziebach and the portions of the Cheyenne River Reservation, the Crow Creek Reservation, and the Lower Brule Reservation that lie within the designated counties for Public Assistance.

All counties and Tribal Reservations in the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster

Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16557 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2008.

Benton, Fountain, Jay, and Montgomery Counties for Public Assistance.

Jefferson and Ripley Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.

Marion County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16551 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

DATES: *Effective Date:* June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 27, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16552 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1766–DR]

Indiana; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

DATES: *Effective Date:* July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2008.

Madison County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16553 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* July 11, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Linn County for Individual Assistance.

Gentry and Livingston Counties for Individual Assistance and Public Assistance.

Bates, Daviess, Grundy, Harrison, Mercer, Polk, and Webster Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16549 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1769–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1769–DR), dated June 19, 2008, and related determinations.

DATES: *Effective Date:* July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 19, 2008.

Clay County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16554 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

DATES: *Effective Date:* July 9, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2008.

Monroe County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16547 Filed 7–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Marjorie A. Kilburn	06387	Houston.
Richard E. Lund	07572	Los Angeles.
Chris T. Banis	05247	San Francisco.
Larry Germi	07842	Miami.

Dated: July 11, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–16559 Filed 7–18–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2008–N0099; 80230–1265–0000–S3]

Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft comprehensive conservation plan and environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges (Refuges) for public review and comment. The Draft CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuges for the next 15 years. Draft compatibility determinations for several existing and proposed public uses are also available for review and public comment with the Draft CCP/EA.

DATES: Written comments must be received at the address below on or before September 12, 2008.

ADDRESSES: For more information on obtaining documents and submitting comments, see ''Review and Comment'' under **SUPPLEMENTARY INFORMATION**.

FOR MORE INFORMATION CONTACT: Kevin Foerster, Project Leader at Sacramento National Wildlife Refuge Complex or Jackie Ferrier, Refuge Planner at Sacramento National Wildlife Refuge Complex address under ''Review and Comment'' or at (530) 934–2801 (telephone).

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation.

Background

Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges are located in the Sacramento Valley of California approximately ninety miles north of the city of Sacramento. The Refuges manage and protect wintering habitat for migratory birds and endangered and threatened species. The Refuges contain approximately 24,000 acres of critically important habitats for a great diversity of wildlife, particularly migratory birds. Over forty percent of the Pacific Flyway waterfowl winters in the Sacramento Valley. The vast majority of wetlands in the Sacramento Valley have been converted to agricultural, industrial, and urban development. Remaining wetlands are intensively managed to optimize wildlife benefits.

Alternatives

The Draft EA/CCP evaluates the environmental effects of four alternatives for managing the Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges for the next 15 years. We propose to implement Alternative C, as described in the EA. Alternative C best achieves the Refuges' purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. This alternative is described in more detail in the CCP.

There are many features of proposed Refuge management that are common to all three alternatives. Features common to all alternatives include ongoing coordination with mosquito control, invasive species management, vernal pool management, habitat management and restoration, implementation of a hunt program, and providing wildlife observation, photography, environmental education, and interpretation opportunities. There are also many features of each alternative that are distinct.

Alternative A, the no action alternative, assumes no change from current management programs and is considered the baseline to compare other alternatives against. Under

Alternative A, the primary management focus of the Refuges would continue to be providing habitat for migrating, wintering, and nesting migratory and resident birds with an emphasis on waterbirds and endangered species by restoring and maintaining wetland, vernal pool, alkali meadow, riparian, and grassland habitats. We would continue to offer wildlife-dependent recreation opportunities on the Refuges including wildlife observation, photography, environmental education, interpretative programs, and hunting, with emphasis on youth and disabled hunters.

Under Alternative B, we would emphasize management for biological resources on the Refuges. Biological opportunities would be maximized to allow optimum wildlife and habitat management throughout the majority of the Refuges. We would continue the current focus of the Refuges to provide wintering habitat for migratory birds and management to benefit endangered species. Habitat and invasive species management programs would be expanded. We would reduce environmental education, interpretation, wildlife observation, wildlife photography, and hunting programs.

Under Alternative C, we would seek to achieve an optimal balance of biological resource objectives and visitor services opportunities on the Refuges. Habitat management and associated biological resource monitoring would be improved. Visitor service opportunities would focus on quality wildlife-dependant recreation distributed throughout the Refuges. In addition, we would expand environmental education, interpretation, wildlife observation, photography, and hunting programs beyond Alternative A.

Under Alternative D, we would emphasize management for visitor services on the Refuges. Wildlife-dependant recreational opportunities would be expanded. Opportunities for the six priority public uses: hunting, fishing, wildlife observation, photography, environmental education, and interpretation, would be expanded beyond Alternatives A, B, and C.

Review and Comment

Copies of the Draft CCP/EA may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Jackie Ferrier, Sacramento National Wildlife Refuge Complex, 752 County Road 99W, Willows, CA 95988. Copies of the Draft CCP/EA may also be viewed at this address. The Draft CCP/EA will also be available for viewing and downloading online at *http://sacramentovalleyrefuges.fws.gov.* Printed documents will also be available for review at the following libraries: Bayliss Library, 7830 County Road 39, Glenn, CA 95943; Butte County Library, 1108 Sherman Avenue, Chico, CA, 95926; Butte County Public Library, 1820 Mitchell Avenue, Oroville, CA, 95966, Colusa County Library, 738 Market Street, Colusa, CA, 95932; Colusa County Library, 232 Prince Street, Princeton, CA, 95970; Corning Library, 740 3rd Street, Corning, CA, 96021; Orland City Library, 333 Mill Street, Orland, CA 95963; Sutter County Library, 750 Forbes Avenue, Yuba City, CA, 95991; and Willows Public Library, 201 North Lassen Street, Willows, CA, 95988.

Comments on the Draft CCP/EA should be addressed to: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge Complex, 752 County Road 99W, Willows, CA 95988. Comments may also be faxed to (530) 934–7814 or submitted via electronic mail to *jackie_ferrier@fws.gov.*

After the review and comment period ends for this Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP. 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.

Dated: July 15, 2008.

Frances E. Mann

Acting Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–16584 Filed 7–18–08; 8:45 am]

BILLING CODE 4310–55–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 July 5, 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 August 5, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Barrio El Hoyo Historic District, Roughly bounded by W. Cushing St. on the N., W. 18th St. on the S., S. 11th Ave. on the E., and S. Samaniego Ave., Tucson, 08000763

COLORADO

Las Animas County

Pleasant Valley School, (New Deal Resources on Colorado's Eastern Plains MPS) Co. Rd. 143 just S. of U.S. Hwy. 160, Branson, 08000764

LOUISIANA

East Baton Rouge Parish

Heidelberg Hotel and Hotel King, 200 Lafayette St., Baton Rouge, 08000765

Lafourche Parish

Frost House, 612 St. Philip St., Thibodaux, 08000766

MONTANA

Powell County

Deer Lodge Central Business Historic District, Roughly bounded by Cottonwood Ave. to the N., Montana Ave. to the S., 2nd St. to the W. and 4th St. to the E., Deer Lodge, 08000767

NEBRASKA

Douglas County

M.A. Disbrow and Company Buildings, 1201–1221 Nicholas St., 1206, 1218, 1224 Izard St., Omaha, 08000768

NEW YORK

Allegany County

Friendship Free Library, 40 W. Main St., Friendship, 08000769

Herkimer County

Blatchley House, 370 Blatchley Rd., Jordanville, 08000770

Orange County

Christ Church, 6 Orchard St., Middletown, 08000771

Seneca County

Cobblestone Farmhouse at 1229 Birdsey Road, (Cobblestone Architecture of New York State MPS) 1229 Birdsey Rd., Junius, 08000772

NORTH CAROLINA

Chatham County

Woody, Burdett, House, (Chatham County MRA) 2232 White Smith Rd., Siler City, 08000773

Cleveland County

Double Shoals Cotton Mill, 199 Old Mill Rd., Double Shoals, 08000775

Durham County

Liberty Warehouse Nos. 1 and 2, (Durham MRA) 611–613 Rigsbee Ave., Durham, 08000774

[FR Doc. E8–16531 Filed 7–18–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Final)]

Circular Welded Carbon-Quality Steel Pipe From China

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of circular welded carbon-quality steel pipe, provided for in subheadings 7306.19.10, 7306.19.51, 7306.30.10, 7306.30.50, 7306.50.10, and 7306.50.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).[2] [3]

Background

The Commission instituted these investigations effective June 7, 2007, following receipt of a petition filed with the Commission and Commerce by Allied Tube & Conduit, Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Northwest Pipe Co., Portland, OR; Sharon Tube Co., Sharon, PA; Western Tube & Conduit Corp., Long Beach, CA; Wheatland Tube Co., Collingswood, NJ; and the United Steelworkers, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of welded carbon-quality steel pipe from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 5, 2008 (73 FR 6738). The hearing was held in Washington, DC, on May 13, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 15, 2008. The views of the Commission are contained in USITC Publication 4019 (July 2008), entitled *Circular Welded Carbon-Quality Steel Pipe From China: Investigation Nos. 701–TA–447 and 731–TA–1116 (Final).*

By order of the Commission.

Issued: July 15, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–16519 Filed 7–18–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–646]

In the Matter of Certain Power Supplies; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation To Add a Respondent

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 presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 8, 2008, based on a complaint filed by Ultra Products, Inc. of Fletcher, Ohio and Systemax Inc. of Port Washington, New York (collectively ''Ultra''). 73 FR 26144–5 (May 8, 2008). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supplies by reason of infringement of certain claims of U.S. Patent No. 7,133,293. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Aerocool Advanced Technologies Corporation of Taipei Hsien, Taiwan; Langears, Inc. d/b/a Aerocool U.S. of Fremont, California; Andyson International Co. of Taipei, Taiwan; Atng Power Co., Ltd. a/k/a I Horng, Power Co., Ltd. of Taipei Hsien, Taiwan; Coolmax Technology Inc. of Taipei, Taiwan; Enermax Technology Corporation of Taoyuan, Taiwan; Enermax USA Corporation of City of Industry, California; High Performance Enterprise PLC, d/b/a High Performance Group or Hiper Group of Milton Keynes, United Kingdom; High Performance Group Inc., d/b/a Hight Performance Group or Hiper Group of San Mateo, California; KWI Technology Inc. d/b/a Kingwin of City of Industry California; San Hawk Technic Co. Ltd., a/k/a Sky Hawk Group of Taipei Taiwan; Eagle Technology Inc., a/k/a Sky Hawk USA or Eagle Tech of City of Industry, California; Sunbearn Company

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

[3] The Commission further determines that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

of Taipei City, Taiwan; and Sunbearntech, Inc. of Hacienda Heights, California as respondents.

On May 20, 2008, Ultra filed a motion for leave to amend the complaint and notice of investigation to add a respondent, Super Flower Computer, Inc. (''Super Flower''). On June 11, 2008, the IA filed a response in support of the motion.

On June 27, 2008, the ALJ issued the subject ID granting the motion, finding that, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), there was good cause to add Super Flower as a respondent. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 16, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–16628 Filed 7–18–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Bonneville Hot Springs, Inc., et al.* (W.D. Wash.), No. C08–5184–RBL, was lodged with the United States District Court for the Western District of Washington on July 14, 2008.

This proposed Consent Decree concerns a complaint filed by the United States against Bonneville Hot Springs, Inc., d/b/a/ Bonneville Hot Springs Resort; Pirfil (''Pete'') Cam, and Elena Cam, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The Complaint also alleges that the Defendants committed trespass, in violation of Washington State law, RCW 4.24.630. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and pay a civil penalty, and also requires that Defendants Pirfil (''Pete'') Cam and Elena Cam execute a deed restriction to preserve natural vegetative and hydrologic conditions on property owned by them.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Harold Malkin, Assistant United States Attorney, 700 Stewart Street, Suite 5220, Seattle, Washington 98101–1271, and refer to *United States* v. *Bonneville Hot Springs, Inc., et al.* (W.D. Wash.), No. 08–5184–RBL.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Washington, 700 Stewart Street, Seattle, Washington 98101–1271. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Russell M. Young,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E8–16532 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for Sustainable Air Transportation, Inc

Notice is hereby given that, on May 29, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Alliance for Sustainable Air Transportation, Inc. (''the Joint Venture'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACS International LLC, Overland Park, KS; Selex Sistemi Integrati, Inc., Overland Park, KS; and University of Central Florida, Orlando, FL have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

On March 14, 2008, the Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 2008 (73 FR 22974).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–16442 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on June 12, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A&A Stamper House Inc., Baldwin Park, CA; ArcSoft Inc., Fremont, CA; BayTSP.Com, Inc., Los Gatos, CA; Challenge Technology (Hong Kong) Limited, Kwun Tong, HONG KONG-CHINA; Main Technology Co., Ltd., Taipei Hsien, TAIWAN; Telestream, Inc., Nevada City, CA; The Refined Industry Co., Ltd., Shatin, HONG KONG-CHINA; and Vobile, Inc., Santa Clara, CA have been added as parties to this venture.

Also, Netflix Inc., Los Gatos, CA; and PrimeDisc Limited, Fo Tan, Shatin, HONG KONG-CHINA have withdrawn as parties to this venture. In addition, the following members have changed their names: CCE da Amazonia S.A. to Cemaz Indústria Electrônica da Amazonia S/A, Sao Paulo, BRAZIL; CustomFlix Labs Inc. to On Demand Publishing LLC, Scotts Valley, CA; KD Media, Inc. to MediaCore, Inc., Gyeonggi-do, REPUBLIC OF KOREA; and TAKT Kwiatkowski & Miadzel Sp.j to TAKT Sp. z.o.o., Warsaw, POLAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and DVD Copy Control Association intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on March 17, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 23, 2008 (73 FR 21984).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–16439 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on June 10, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CTUnion, Co., Ltd., Seoul, REPUBLIC OF KOREA; Digital University Network (DUNET), Seoul, REPUBLIC OF KOREA; Editure, Education Technology Division, North Melbourne, Victoria, AUSTRALIA; The Kennisnet Foundation, Zoetermeer, THE NETHERLANDS; National Institute of Multimedia Education, Mihama-ku, Chiba, JAPAN; Sakai Foundation, Ann Arbor, MI; and SK C&C, Gyeonggi-do, REPUBLIC OF KOREA have been added as parties to this venture. Also, Agilix, Orem, UT has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 31, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 9, 2008 (73 FR 26414).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–16440 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on June 13, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Australian Defence Information & Electronic Systems Association, Inc., Manuka, ACT, AUSTRALIA; Fraunhofer Institute for Open Communication Systems, Berlin, GERMANY; The SDR Forum Inc., Phoenix, AZ; and SenseResponder LLC, San Diego, CA have been added as parties to this venture.

Also, Ball Solutions Group Pty Ltd., Barton, ACT, AUSTRALIA; Interoperability Clearinghouse, Alexandria, VA; and United States Department of Homeland Security, Science and Technology Directorate, Washington, DC have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on March 25, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 9, 2008 (73 FR 26414).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–16438 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 OpenSAF Foundation

Notice is hereby given that, on June 6, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenSAF Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Huawei Technologies Co. Ltd., Shenzhen, Guangdong, PEOPLE'S REPUBLIC OF CHINA; and Rancore Technologies (P) Ltd., Ghansoli, Navi Mumbai, INDIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenSAF Foundation intends to file additional written notifications disclosing all changes in membership.

On April 8, 2008, OpenSAF Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to

Section 6(b) of the Act on May 16, 2008 (73 FR 28508).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–16441 Filed 7–18–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,892]

Barnes Aerospace, Ceramics Division, Windsor, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 2, 2008, a petitioner requested administrative reconsideration of the negative determination regarding workers' 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 determination was issued on June 10, 2008. The Notice of determination was published in the **Federal Register** on June 27, 2008 (73 FR 36576).

The initial investigation resulted in a negative determination based on the finding that imports of multi-layer ceramic green sheet did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding subject firm's customers and alleged that the subject firm shifted production to Taiwan.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16565 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,197]

Dan River, Inc., Danville Operations, Danville, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 3, 2008, a company official requested administrative reconsideration of the negative determination regarding workers' 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 determination was issued on May 29, 2008. The Notice of determination was published in the **Federal Register** on June 16, 2008 (73 FR 34044).

The initial investigation resulted in a negative determination based on the finding that the worker group engaged in production planning, inventory control and label/packaging design activities, does not produce an article within the meaning of Section 222(a)(2) of the Act.

In the request for reconsideration, the company official provided additional information regarding activities of the workers at the subject facility. The petitioner stated that workers of the subject firm were engaged in ''final light-manufacturing and assembly of retail products.''

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16568 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,955]

Pitney Bowes Tech Central Infrastructure & Support Services Danbury, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked June 12, 2008, the petitioners requested administrative reconsideration of the negative determination regarding workers' 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 determination was issued on May 15, 2008. The Notice of Determination was published in the **Federal Register** on May 29, 2008 (73 FR 30978).

The initial investigation resulted in a negative determination based on the finding that the worker group engaged in information technology technical support, does not produce an article within the meaning of section 222(a)(2) of the Act.

In the request for reconsideration, the petitioners provided additional information regarding activities of the workers at the subject facility. The petitioners stated that workers of the subject firm directly supported production of articles at Pitney Bowes production facilities.

The Department has carefully reviewed the request for reconsideration and determined that the Department will conduct further investigation to determine whether the workers of the subject firm supported production of articles at Pitney Bowes manufacturing facilities and whether these facilities meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16566 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,278]

Wheeling Pittsburg Steel Corporation, Allenport, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 26, 2008, United Steelworkers, Local Union 1187 requested administrative reconsideration of the negative determination regarding workers' 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 determination was issued on May 21, 2008. The Notice of determination was published in the **Federal Register** on June 3, 2008 (73 FR 31716).

The initial investigation resulted in a negative determination based on the finding that imports of cold rolled sheet coil did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided a list of additional customers of the subject firm and requested to conduct a survey of these customers.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16570 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,317]

General Ribbon Corporation, Currently Known as Clover Technologies Group, Chatsworth, CA; 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 Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 30, 2006, applicable to workers of General Ribbon Corporation, Chatsworth, California. The notice was published in the **Federal Register** on December 12, 2006 (71 FR 74564).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers remanufactured laser toner cartridges.

New information shows that in March 2007, Clover Technologies Group purchased General Ribbon Corporation and is currently known as Clover Technologies Group.

Accordingly, the Department is amending this certification to show that General Ribbon Corporation is currently known as Clover Technologies Group.

The intent of the Department's certification is to include all workers of General Ribbon Corporation currently known as Clover Technologies Group who were adversely affected by increased imports.

The amended notice applicable to TA–W–60,317 is hereby issued as follows:

All workers of General Ribbon Corporation, currently known as Clover Technologies Group, Chatsworth, California, who became totally or partially separated from employment on or after October 25, 2005, through November 30, 2008, 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 14th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16563 Filed 7–18–08; 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 June 30 through July 3, 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.

TA–W–63,388; The News and Observer Publishing Company, Advertising Department, Raleigh, NC: May 14, 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) of the Trade Act have been met.

TA–W–63,569; Leggett and Platt, Super Sagless Division, Tupelo, MS: June 18, 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) 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–63,336; CHR Hansen, Inc., Mahwah, NJ: May 6, 2007.

TA–W–63,350; Solon Manufacturing Company, Rhinelander, WI: April 29, 2007.

TA–W–63,614; Benmatt Industries, A Subsidiary of Lafrance Corporation, Federalsburg, MD: June 26, 2007.

TA–W–63,219; OCV Fabrics, Inc., Ridgeway, SC: April 17, 2007.

TA–W–63,273; Sherman Textile Company, Dallas, NC: April 28, 2007.

TA–W–63,340; S. Shamash and Sons, Secaucus, NJ: May 7, 2007.

TA–W–63,416; Novelis Corporation, Louisville Rolled Products Division, Louisville, KY: May 20, 2007.

TA–W–63,441; Metaldyne Corporation, Powertrain Division, Hamburg, MI: May 27, 2007.

TA–W–63,479; S.U.S. Cast Products, Inc., Logansport, IN: June 2, 2007.

TA–W–62,663; C and D Technologies, Inc, Conyers, GA: January 9, 2007.

TA–W–63,433; General Motors Metal Fabricating Division, Parma, OH: May 27, 2007.

TA–W–63,495; Nova Knits, Inc., San Francisco, CA: May 23, 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–63,405; Esselte Corporation, Buena Park, CA: May 19, 2007.

TA–W–63,505; Permacel Automotive, Kansas City, MO: June 2, 2007.

TA–W–63,529; Fisher and Company, Inc., Fisher Dynamics Division, St. Clair Shores, MI: July 13, 2008.

TA–W–63,543; Pliant Corporation, Deerfield Converter Films Div., Reliable Temp, South Deerfield, MA: June 12, 2007.

TA–W–63,562; Winchester Electronics, Metz, KPB and Venturi, Rock Hill, SC: June 16, 2007.

TA–W–63,563; Winchester Electronics—Franklin, Franklin, MA: June 16, 2007.

TA–W–63,584; NxStage Medical, Inc., Lawrence, Inc., MA: June 23, 2007.

TA–W–63,620; Plastech Engineered Products, Exterior Division, Romulus, MI: June 27, 2007.

TA–W–63,489; Weastec, Inc., Reserves Network, Hillsboro, OH: June 5, 2007.

TA–W–63,571; WestPoint Home, New York Sales Office, New York, NY: June 19, 2007.

TA–W–63,532; Woodward Controls, Inc., A Subsidiary of Woodward Governor Company, Niles, IL: 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.

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) 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.

TA–W–63,388; The News and Observer Publishing Company, Advertising Department, Raleigh, NC.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–63,569; Leggett and Platt, Super Sagless Division, Tupelo, MS.

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–63,496; Boyd Corporation, Chino, CA.

TA–W–63,583; Dicon Fiber Optics, Inc., Richmond, CA.

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.

TA–W–63,431; Greenville Tool & Die Company, Greenville, MI.

TA–W–63,466; Citation Corporation, Butler, IN.

TA–W–63,533; Thomasville Furniture Industries, Upholstery Plant 9, Hickory, NC.

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–63,452; Katahdin Paper Company LLC, Millinocket, ME.

TA–W–63,444; Skyline McMinnville Nomad Division, McMinnville, OR.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,512; Dynamic Technology, Inc., Leased Workers On-Site at General Motors, Proving Ground, Milford, MI.

TA–W–63,512A; Dynamic Technology, Inc., Leased Workers On-Site at General Motors, Research & Development, Warren, MI.

TA–W–63,512B; Dynamic Technology, Inc., Leased Workers On-Site at General Motors, Research & Development, Pontiac, MI.

TA–W–63,512C; Dynamic Technology, Inc., Leased Workers On-Site at General Motors, Proving Ground, Proving Ground, AZ.

TA–W–63,541; Avery Dennison Corporation, Corp. Center, Customer Operations D.C., Fontana, CA.

TA–W–63,561; United Airlines, Information Services Division, El Segundo, CA.

TA–W–63,573; Avon Products, Inc., Suwannee, GA.

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.

None.

I hereby certify that the aforementioned determinations were issued during the period of June 30 through July 3, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 10, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16562 Filed 7–18–08; 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 July 31, 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 July 31, 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 10th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 6/30/08 AND 7/3/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63616	Holophane (Comp)	Newark, OH	06/30/08	06/20/08
63617	Comprehensvie Logistics, Inc. (Comp)	Youngstown, OH	06/30/08	06/27/08
63618	Whirlpool Corporation (State)	Fort Smith, AR	06/30/08	06/26/08

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 6/30/08 AND 7/3/08—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63619	Comor, Inc. (Comp)	Cochranton, PA	06/30/08	06/27/08
63620	Plastech Engineered Products (Comp)	Romulus, MI	06/30/08	06/27/08
63621	Valco Furniture USA, Inc. (Comp)	Malone, NY	06/30/08	06/27/08
63622	Plastech Engineered Products—Grandville (Union)	Grandville, MI	06/30/08	06/26/08
63623	Best Textiles International (Wkrs)	Highland, IL	06/30/08	06/25/08
63624	UFE, Inc.—River Falls Molding (Comp)	River Fall, WI	06/30/08	06/27/08
63625	Carlisle Publishing Services (Comp)	Dubuque, IA	06/30/08	06/27/08
63626	Mahle Engine Components USA, Inc. (IAMAW)	Manchester, MO	06/30/08	06/27/08
63627	Chrysler, LLC—Toledo Machining Plant (Comp)	Perrysburg, OH	06/30/08	06/28/08
63628	Frontier Yarns, LLC (Comp)	Lafayette, AL	06/30/08	06/27/08
63629	Gleason Corporation (Comp)	Fort Madison, IA	06/30/08	06/26/08
63630	Permacel St. Louis, Inc. (IBT)	St. Louis, MO	07/01/08	06/23/08
63631	Johnson Controls, Inc. (Comp)	West Carrollton, OH	07/01/08	06/27/08
63632	Luxmovera DBA Uplinkearth (Wkrs)	Somerset, NJ	07/01/08	06/30/08
63633	Quest Diagnostics Clinical (Wkrs)	St. Louis, MO	07/01/08	06/23/08
63634	Wausau Paper Specialty Products, LLC (Comp)	Jackson, MS	07/01/08	06/28/08
63635	Robert Bosch Corporation (Comp)	Broadview, IL	07/01/08	06/27/08
63636	Rutland Tool and Supply Company (State)	Whittier, CA	07/01/08	06/30/08
63637	Hayes Lemmerz International—Georgia, Inc. (Comp)	Gainesville, GA	07/01/08	07/01/08
63638	Magna (Wkrs)	Shelby Township, MI	07/02/08	06/24/08
63639	Taylor's Leatherwear (Comp)	Tullahoma, TN	07/02/08	06/25/08
63640	3M Touch Systems (Comp)	Milwaukee, WI	07/03/08	07/02/08
63641	Shaw Industries (Wkrs)	Stevenson, AL	07/03/08	06/24/08
63642	Enercon (Comp)	Gray, ME	07/03/08	07/01/08
63643	Zafarana Enterprises, Inc. (Comp)	Lathrup Village, MI	07/03/08	07/02/08
63644	Siemens Healthcare Diagnostics (Comp)	Los Angeles, CA	07/03/08	07/01/08
63645	Kavlico Corporation (Wkrs)	Moorpark, CA	07/03/08	06/23/08

[FR Doc. E8–16561 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,019]

Honeywell Aerospace Aerospace—Defense & Space Division Teterboro, NJ; Notice of Negative Determination on Reconsideration

On June 16, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 25, 2008 (73 FR 36119).

The initial investigation resulted in a negative determination based on the finding that imports of displays, processors, flight controls, software, and test equipment did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The United Automobile, Aerospace & Agricultural Implement Workers of America, Local 153 filed a request for reconsideration and alleged that Honeywell is ''closing the Teterboro facility and opening a facility in Mexicali, Mexico.''

The Department of Labor contacted a company official to address the allegation that production was shifted from the subject firm to Mexico. The company official confirmed that Honeywell International has a production facility in Mexicali, Mexico. However, it was revealed that the facility in Mexicali does not manufacture articles like or directly competitive with products manufactured at the subject facility. The company official stated that although some production has been shifted by Honeywell from the United States to foreign locations, the articles shifted are not like or directly competitive with the articles manufactured by Aerospace—Defense & Space Division in Teterboro, New Jersey. The official stated that Honeywell Aerospace did not shift production of defense avionics, flight controls, test equipment and displays from the Teterboro facility to any overseas locations. Furthermore, the official stated that the subject firm is ceasing production since Honeywell ''made a business decision to sell the Teterboro property'' and ''consolidate the work into other U.S. locations.'' Therefore, the worker separations at the subject firm are the result of production being shifted from the subject facility to other domestic locations.

The petitioner also alleged that the subject firm would cease its production as a direct result of Honeywell importing products from the facility in Mexico to the United States.

The company official stated that Honeywell Aerospace did not import products like or directly competitive with defense avionics, flight controls, test equipment manufactured at the subject facility.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Honeywell Aerospace, Aerospace—Defense & Space Division, Teterboro, New Jersey.

Signed at Washington, DC, this 15th day of July 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16567 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,243]

Electric Mobility Corporation, Sewell, NJ; Notice of Revised Determination on Remand

On May 21, 2008, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Electric Mobility Corporation* v. *U.S. Secretary of Labor*, Court No. 08–00079.

The petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) petition, dated October 2, 2007, was filed on behalf of workers and former workers of Electric Mobility Corporation, Sewell, New Jersey (the subject firm). AR 1. The petition indicated that the workers produced ''medical and mobility devices'' and that the subject workers are employed by a firm or subdivision that has increased imports of like or directly competitive articles and/or has shifted production of the article to a foreign country. AR 1–2. The petition also noted the reason the petitioner believes the workers are eligible for TAA and ATAA is that workers at the subject firm were ''previously certified under TA–W–56342, expired 2/4/07.'' AR 2.

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 either one of two ways:

I. Section (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 (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.

On November 1, 2007, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of the subject firm. AR 28.

The initial investigation revealed that the subject workers are not separately identifiable by product line, AR 27, and that since the certification applicable to TA–W–56,342 expired on February 4, 2007, the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. AR 27.

On November 15, 2007, the Department's Notice of negative determination applicable to the subject workers was published in the **Federal Register** (72 FR 64247). AR 35.

In the request for administrative reconsideration, dated November 19, 2007, a worker alleged that ''there was a work force reduction of over 5% for a company with over 50 employees'' and provided documentation in support of the allegation. AR 36–39.

The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on November 26, 2007. AR 66. In a letter, dated November 28, 2007, the Department informed the petitioning worker of the determination. AR 69. The Notice of Affirmative Determination was published in the **Federal Register** on December 3, 2007 (72 FR 67965). AR 70.

On December 19, 2007, the Department issued a Notice of Negative Determination on Reconsideration. The determination stated that while ''workers were laid off from the subject firm during the relevant time period * * * overall employment at the subject firm has increased from October 2006 to September 2007.'' The Department concluded that since employment levels at the subject firm did not decline during the relevant period and that there were no threats of separations during the relevant period, the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. AR 72–73.

In a letter, dated December 27, 2007, the Department informed the petitioning worker of the negative determination. AR 74. The Notice of Negative Determination was published in the **Federal Register** on January 10, 2008 (73 FR 1897). AR 75.

In the complaint to the USCIT, dated February 25, 2008, the Plaintiff alleged that, during the relevant period, the subject firm did separate or threaten to separate a significant number or proportion of workers. Attached to the complaint is a copy of a message from the ''Lead Auditor'' of ''the ISO Registrar (TUV)'' that stated that ''during the audit of 10/30/06 the head count was 343. In November of 2006 there was a reduction of 75 for a total of 268. In May of 2007 there was a reduction of 18 for a total of 250. The total headcount on 10/24/2007 was 250.''

On May 21, 2008, the USCIT granted the Department's request for voluntary remand for further investigation.

On remand, the Department sought additional information from Plaintiff's counsel, SAR 1, 5, and requested clarification regarding subject firm employment levels during the relevant period. SAR 32–35. As a result of these efforts, the Department was able to obtain crucial information not previously available.

During the remand investigation, Plaintiff's counsel stated that his client had additional information that was not in the administrative record, SAR 1, and submitted new information for the Department's consideration. SAR 6–29.

During the remand investigation, a subject firm official explained how previously-submitted employment data was unclear, SAR 32, and provided revised employment figures for the relevant period (October 2, 2006 through October 2, 2007). SAR 37.

Based on the above information, the Department determines that employment levels at the subject firm did decline during the relevant period. As such, the Department determines that Section (a)(2)(A)(A) has been met.

Earlier submissions revealed that sales and production at the subject firm declined in 2006 from 2005 levels and declined during January through September 2007 from the corresponding period the prior year. AR 12. As such, the Department determines that Section (a)(2)(A)(B) has been met.

Earlier submissions also revealed that, during the relevant period, the subject

firm increased reliance on imports of articles like or directly competitive with medical and mobility devices produced by the subject workers. AR 12. As such, the Department determines that Section (a)(2)(A)(C) has been met.

In accordance with Section 246 of 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 ATAA. The Department has determined in this case that the group eligibility 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 developed in the remand investigation for workers of Electric Mobility Corporation, Sewell, New Jersey, I determine that there was a total separation of a significant number or proportion of workers at the subject firm, that there was a decline in sales and production, and that increased imports of articles like or directly competitive with medical and mobility devices produced by the subject firm contributed importantly to the decline in sales and production and the worker separations at that firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Electric Mobility Corporation, Sewell, New Jersey, who became totally or partially separated from employment on or after February 5, 2007, through two years from the issuance of this revised determination, are eligible to apply for Trade 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 at Washington, DC this 10th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16564 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,625]

Carlisle Publishing Services, A Subsidiary of Carlisle Communications Ltd., Dubuque, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2008 in response to a worker petition filed by a company official on behalf of workers of Carlisle Publishing Services, a subsidiary of Carlisle Communications LTD, Dubuque, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of July 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16560 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,600]

Colson Monette, Monette, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 25, 2008 in response to a petition filed on behalf of workers of Colson Monette, Monette, Arkansas.

The petition regarding the investigation has been deemed invalid. The petition was signed by one dislocated worker. A petition filed by workers requires three signatures. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16571 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,221]

IAC Corporation, Dayton, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 21, 2008 in response to a petition filed by a company official on behalf of workers of IAC Corporation, Dayton, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16569 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,603]

Western Mattress, San Angelo, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 26, 2008 in response to a petition filed by a company official on behalf of workers of Western Mattress, San Angelo, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–16572 Filed 7–18–08; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 14, 2008.

1. *Type* of submission, new, revision, or extension: Extension.

2. *The title of the information collection:* 10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

3. *Current OMB approval number:* 3150–0001.

4. *The form number if applicable:* NRC Form 653.

5. *How often the collection is required:* There is a one-time submittal of information to receive a certificate of registration for a sealed source and/or device. Certificates of registration for sealed sources and/or devices can be amended at any time. In addition, licensee recordkeeping must be performed on an on-going basis, and reporting of transfer of byproduct material must be reported every calendar year, and in some cases, every calendar quarter.

6. *Who will be required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device.

7. *An estimate of the number of annual responses:* 1,315

8. *The estimated number of annual respondents:* 846 (239 NRC licensees and registration certificate holders and 607 Agreement State licensees and registration certificate holders).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 166,054 (10,635 reporting hours, 155,285 hours for recordkeeping, and 134 hours for third party disclosures)

10. *Abstract:* 10 CFR Part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a certificate of registration for a sealed source and/or device, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. As mentioned, 10 CFR Part 32 also prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR Part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 20, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Russell Nichols, (301) 415–6847.

Dated at Rockville, Maryland, this 15th day of July, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–16603 Filed 7–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413]

Duke Energy Carolinas, LLC; North Carolina Electric Membership Corporation; Saluda River Electric Cooperative, Inc.; Catawba Nuclear Station, Unit 1; Notice of Consideration of Approval of the Proposed Transfer of the Catawba Nuclear Station, Unit 1, Renewed Facility Operating License No. NPF–35 and Conforming Amendment, and Opportunity for a Hearing Regarding Transfer of the Saluda River Electric Cooperative, Inc.'S Undivided Ownership Interest in Catawba Nuclear Station, Unit 1, to Duke Energy Carolinas, LLC, a Current Owner and Operator and North Carolina Electric Membership Corporation, a Current Owner

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the direct transfer of the Renewed Facility Operating License No. NPF–35 for the Catawba Nuclear Station, Unit 1 (Catawba 1), currently held by Duke Energy Carolinas, LLC (Duke/the licensee), as owner and licensed operator, and Saluda River Electric Cooperative, Inc. (SREC/the licensee), and North Carolina Electric Membership Corporative (NCEMC/the licensee), as owners. The action would be to transfer the SREC undivided ownership interest in Catawba 1 to Duke and NCEMC. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by the licensees, following approval, Duke will purchase 71.96 percent of the SREC's interest in Catawba 1 and will allow NCEMC to purchase 28.04 percent of SREC's interest in Catawba 1. Duke will remain responsible for the operation and maintenance of Catawba 1.

No physical changes to the Catawba 1 facility or operational changes are being proposed in the application.

The proposed amendment would replace references to SREC to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines

that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)–(viii).

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process 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/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/ requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* Once a petitioner/ requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern 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 personal privacy information, such as social security numbers, home

addresses, or home phone 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 Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this license transfer application, see the application dated December 20, 2007, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 14th day of July 2008.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–16600 Filed 7–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 6.2, Revision 2

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued revisions to existing guides in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 6.2, ''Integrity and Test Specifications for Selected Brachytherapy Sources,'' was issued with a temporary identification as Draft Regulatory Guide DG–6004. This guide directs the reader to the type of information acceptable to the NRC staff to evaluate the integrity and test specifications for selected brachytherapy sources. The manufacture of brachytherapy sources containing byproduct material requires a license pursuant to Title 10, section 30.3, ''Activities Requiring License,'' of the *Code of Federal Regulations* (10 CFR 30.3). Brachytherapy sources manufactured under such a license must meet certain integrity requirements and pass certain tests. The regulation at 10 CFR 32.74(a)(2)(iii) requires that an application for a specific license to manufacture and distribute brachytherapy sources and devices containing byproduct material include a description of the procedures for, and results of, prototype tests performed to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents. Additionally, 10 CFR 32.74(a)(2)(v) requires that the application also include details of quality control procedures to ensure that production sources and devices meet the standards of the design and prototype tests.

This regulatory guide endorses the methods and procedures for integrity and test specifications of selected brachytherapy sources contained in the current revisions of NUREG–1556, Volume 3, ''Consolidated Guidance about Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration'' and NUREG–1556, Volume 9, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Medical Use Licenses'' as a process that the NRC staff has found to be acceptable for meeting the regulatory requirements.

II. Further Information

In December 2007, DG–6004 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 18, 2008. Electronic copies of Regulatory Guide 6.2, Revision 2 are available through the NRC(s public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 11th day of July, 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–16577 Filed 7–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–281]

Virginia Electric and Power Company, et al., Surry Power Station, Unit No. 2 Notice of Issuance of Amendment to Facility Operating License; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a Notice of Issuance of Amendment to Facility Operating License appearing in the **Federal Register** on June 17, 2008 (73 FR 34346), for Surry Power Station, Unit No. 2. This notice was incorrectly put under the Section titled ''Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances).'' It should have appeared under the Section titled ''Notice of Issuance of Amendments to Facility Operating Licenses.''

FOR FURTHER INFORMATION CONTACT: Siva Lingam, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1564, e-mail: *Siva.Lingam@nrc.gov.*

Dated in Rockville, Maryland, this 14th day of July 2008.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–16576 Filed 7–18–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Special 301 Out-of-Cycle Review of Taiwan: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special 301'' provisions of the Trade Act.) In addition, the USTR is required to determine which of these trading partners should be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a trading partner's identification as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

On April 25, 2008, USTR announced the results of the 2008 Special 301 Review and stated that an Out-of-Cycle Review of Taiwan would be conducted this year. Pursuant to this Out-of-Cycle Review, USTR requests written submissions from the public concerning acts, policies, and practices regarding the adequacy and effectiveness of intellectual property protection and enforcement in Taiwan.

DATES: Submissions must be received on or before 10 a.m. on Monday, September 8, 2008.

ADDRESSES: All comments should be addressed to Jennifer Choe Groves, Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the numbers ''zero-six-zero-six,'') with ''Taiwan Out-of-Cycle Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Jennifer Choe Groves, Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative at (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, USTR must identify those trading partners that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those trading partners that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a trading partner's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a trading partner as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

On April 25, 2008, USTR announced the results of the 2008 Special 301 Review and stated that an Out-of-Cycle Review of Taiwan would be conducted this year. Pursuant to this Out-of-Cycle Review, USTR requests written submissions from the public concerning acts, policies, and practices regarding the adequacy and effectiveness of intellectual property protection and enforcement in Taiwan.

Requirements for comments: Comments should include a description of experiences with respect to Taiwan in the field of intellectual property rights and the effect of the acts, policies, and practices of Taiwan on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of any acts, policies, and practices of Taiwan. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, Adobe, or Text files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. All comments and supporting documentation received by USTR will be made available to the public through electronic or other means. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Dates: Submissions must be received on or before 10 a.m. on Monday, September 8, 2008.

All comments should be addressed to Jennifer Choe Groves, Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the *numbers* ''zero-six-zero-six,'') with ''Taiwan Out-of-Cycle Review'' in the subject line, or (ii) by fax, to (202) 395–

9458, with a confirmation copy sent electronically to the email address above.

Public inspection of submissions: (1) Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday.

Stanford K. McCoy,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. E8–16636 Filed 7–18–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 58166/July 15, 2008]

Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

False rumors can lead to a loss of confidence in our markets. Such loss of confidence can lead to panic selling, which may be further exacerbated by ''naked'' short selling. As a result, the prices of securities may artificially and unnecessarily decline well below the price level that would have resulted from the normal price discovery process. If significant financial institutions are involved, this chain of events can threaten disruption of our markets.

The events preceding the sale of The Bear Stearns Companies Inc. are illustrative of the market impact of rumors. During the week of March 10, 2008, rumors spread about liquidity problems at Bear Stearns, which eroded investor confidence in the firm. As Bear Stearns' stock price fell, its counterparties became concerned, and a crisis of confidence occurred late in the week. In particular, counterparties to Bear Stearns were unwilling to make secured funding available to Bear Stearns on customary terms. In light of the potentially systemic consequences of a failure of Bear Stearns, the Federal Reserve took emergency action.

The Commission has taken a series of actions to address concerns about rumors. For example, in April, 2008, we charged Paul S. Berliner, a trader, with securities fraud and market manipulation for intentionally disseminating a false rumor concerning The Blackstone Group's acquisition of Alliance Data Systems Corp (''ADS''). The Commission alleged that this false rumor caused the price of ADS stock to plummet, and that Berliner profited by short selling ADS stock and covering those sales as the false rumor caused the price of ADS stock to fall. See *http://www.sec.gov/litigation/litreleases/2008/lr20537.htm*.

As another example, on July 13, 2008, the Commission announced that the SEC and other securities regulators would immediately conduct examinations aimed at the prevention of the intentional spreading of false information intended to manipulate securities prices. The examinations will be conducted by the SEC's Office of Compliance Inspections and Examinations, as well as the Financial Industry Regulatory Authority, Inc. and New York Stock Exchange Regulation, Inc. See *http://www.sec.gov/news/press/2008/2008-140.htm*.

We intend these and similar actions to provide powerful disincentives to those who might otherwise engage in illegal market manipulation through the dissemination of false rumors and thereby over time to diminish the effect of these activities on our markets. In recent days, however, false rumors have continued to threaten significant market disruption. For example, press reports have described rumors regarding the unwillingness of key counterparties to deal with certain financial institutions. There also have been rumors that financial institutions are facing liquidity problems.

As a result of these recent developments, the Commission has concluded that there now exists a substantial threat of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Securities Exchange Act of 1934.[1] Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

In these unusual and extraordinary circumstances, we have concluded that requiring all persons to borrow or arrange to borrow the securities identified in Appendix A prior to effecting an order for a short sale of those securities is in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption in the securities markets. This emergency requirement will eliminate any possibility that naked short selling may contribute to the disruption of markets in these securities. We described in the releases in which we proposed and adopted Regulation SHO the bases for the current requirements Regulation SHO imposes. We believe, however, that the unusual circumstances we now confront require the temporarily enhanced requirements we are imposing today.

It is ordered that, pursuant to our Section 12(k)(2) powers, in connection with transactions in the publicly traded securities of substantial financial firms, which entities are identified in Appendix A, no person may effect a short sale[2] in these securities using the means or instrumentalities of interstate commerce unless such person or its agent has borrowed or arranged to borrow the security or otherwise has the security available to borrow in its inventory prior to effecting such short sale and delivers the security on settlement date.[3]

In order to allow market participants time to adjust their operations to implement the enhanced requirements, this Order shall take effect at 12:01 a.m. EDT on Monday, July 21, 2008. This Order shall terminate at 11:59 p.m. EDT on Tuesday, July 29, 2008 unless further extended by the Commission.

By the Commission.

Florence E. Harmon,

Acting Secretary.

APPENDIX A

Company	Ticker symbol(s)
BNP Paribas Securities Corp.	BNPQF or BNPQY
Bank of America Corporation	BAC

[1] This finding of an ''emergency'' is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

[2] The definition of ''short sale'' shall be the same definition used in Rule 200(a) of Regulation SHO and the requirements for marking orders ''long'' or ''short'' shall be the same as provided in Regulation SHO.

[3] Short sales to be effected as a result of a put options exercise are subject to this Order. In addition, we note that short sales used to hedge would also be subject to this Order.

APPENDIX A—Continued

Company	Ticker symbol(s)
Barclays PLC	BCS
Citigroup Inc.	C
Credit Suisse Group	CS
Daiwa Securities Group Inc.	DSECY
Deutsche Bank Group AG	DB
Allianz SE	AZ
Goldman, Sachs Group Inc	GS
Royal Bank ADS	RBS
HSBC Holdings PLC ADS	HBC and HSI
J.P. Morgan Chase & Co.	JPM
Lehman Brothers Holdings Inc.	LEH
Merrill Lynch & Co., Inc.	MER
Mizuho Financial Group, Inc.	MFG
Morgan Stanley	MS
UBS AG	UBS
Freddie Mac	FRE
Fannie Mae	FNM

[FR Doc. E8–16545 Filed 7–18–08; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58161; File No. SR–Amex–2008–39]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Issued Receipts That Directly Hold Investments in Certain Financial Instruments and To Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust

July 15, 2008.

I. Introduction

On May 9, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to: (1) Amend Commentary .07 to Amex Rule 1202 to permit the listing and trading of certain trust issued receipts (''TIRs'') that directly hold any combination of investments including cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements (collectively, ''Financial Instruments''); and (2) list and trade the shares (''Shares'') of fourteen funds (''Funds'') of the Commodities and Currency Trust (''Trust'') based on certain commodity indexes, commodities, and currencies pursuant to Commentary .07 to Amex Rule 1202, as proposed to be amended. On June 4, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 12, 2008.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to amend Commentary .07 to Amex Rule 1202 to permit the listing and trading of certain TIRs that directly hold any combination of investments in Financial Instruments.[4] In addition, the Exchange proposes to list and trade the Shares of the Funds pursuant to Commentary .07 to Amex Rule 1202, as proposed to be amended.

Proposed Amendments to Commentary .07 to Amex Rule 1202

Commentary .07 to Amex Rule 1202 currently permits the Exchange to list and trade TIRs where the underlying trust holds ''Investment Shares.'' [5] As a result, TIRs that are listed pursuant to current Commentary .07 to Amex Rule 1202 are required to be in the form of a ''master-feeder'' structure, whereby the listed security holds or invests in the security of the fund that is investing in the prescribed financial instruments.

As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain tax reporting form, the Exchange has been notified that the need for the current master-feeder structure set forth in Commentary .07 to Amex Rule 1202 is no longer necessary. The Exchange represents that there are no substantive differences between the proposed structure (TIRs directly holding Financial Instruments) and the current master-feeder structure (TIRs holding Investment Shares that invest in certain financial instruments). Amex states that its proposal would provide an alternative for issuers so that TIRs may be listed and traded on the Exchange that directly invest in or hold Financial Instruments, rather than through an additional security of a fund.

Specifically, the proposal seeks to expand the application of Commentary .07 to Amex Rule 1202 to both Investment Shares and Financial Instruments. Accordingly, new Commentary .07(b)(4) to Amex Rule 1202 would be added to define ''Financial Instrument'' as any combination of cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements. Amex seeks to add the term ''Financial Instrument'' to where the term ''Investment Shares'' appears throughout Commentary .07 to Amex Rule 1202 to indicate that TIRs directly holding Financial Instruments may be listed and traded on the Exchange.

Proposal To List and Trade the Shares of the Funds

The Shares of each Fund will generally be subject to the Amex rules applicable to TIRs. The Shares represent common units of fractional undivided beneficial interests in, and ownership of, each Fund. Each Fund will invest the proceeds of its offering of Shares in various Financial Instruments that will provide exposure to the Funds' underlying currency, commodity, or commodity index, as applicable. In addition, the Funds will also maintain cash positions in cash or money market instruments for the purpose of collateralizing such positions taken in the Financial Instruments.

Shares of seven of the Funds of the Trust will be designated as Ultra ProShares while the Shares of the other seven Funds of the Trust will be designated as UltraShort ProShares.[6] Each of the Funds will have a distinct

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57932 (June 5, 2008), 73 FR 33467 (''Notice'').

[4] The Exchange represents that permissible securities in connection with Financial Instruments would not include foreign equity securities.

[5] Investment Shares are defined in Commentary .07(b)(1) to Amex Rule 1202 as securities that are (a) issued by a trust, partnership, commodity pool, or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed-income securities or other securities, and (b) issued and redeemed daily at net asset value (''NAV'') in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. *See* Commentary .07(a) to Amex Rule 1202. *See also* Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex 2005–059) (approving, among other things, the adoption of Commentary .07 to Amex Rule 1202).

[6] The Funds are the: (1) Ultra DJ–AIG Commodity ProShares; (2) UltraShort DJ–AIG Commodity ProShares; (3) Ultra DJ–AIG Agriculture ProShares; (4) UltraShort DJ–AIG Agriculture ProShares; (5) Ultra DJ–AIG Crude Oil ProShares; (6) UltraShort DJ–AIG Crude Oil ProShares; (7) Ultra Gold ProShares; (8) UltraShort Gold ProShares; (9) Ultra Silver ProShares; (10) UltraShort Silver ProShares; (11) Ultra Euro ProShares; (12) UltraShort Euro ProShares; (13) Ultra Yen ProShares; and (14) UltraShort Yen ProShares. *See* Exhibit A to Amex's proposed rule change on Form 19b–4.

investment objective. The Funds will attempt, on a daily basis, to achieve their investment objective by corresponding to a specified multiple or an inverse multiple of the performance of a particular benchmark commodities index, commodity, or currency (each an ''Underlying Benchmark'' and collectively, the ''Underlying Benchmarks'').

Six Funds will be based on the following Underlying Benchmark indexes: (1) The Dow Jones-AIG Commodity Index℠; (2) the Dow Jones-AIG Crude Oil Sub-Index℠; and (3) the Dow Jones-AIG Agriculture Sub-Index℠ (each, an ''Underlying Index'' and collectively, the ''Underlying Indexes''). Four Funds will be based on the following Underlying Benchmark commodities: (1) Gold; and (2) silver (each, an ''Underlying Commodity'' and collectively, the ''Underlying Commodities''). Lastly, four Funds will be based on the following Underlying Benchmark currencies versus the U.S. dollar: (1) The Euro; and (2) the Japanese Yen (each, an ''Underlying Currency'' and collectively, the ''Underlying Currencies'').

The Exchange proposes to list and trade the Shares of the Funds, that seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Benchmark (the ''Ultra Funds''). If each such Fund is successful in meeting its investment objective, the NAV[7] of the Shares of each such Fund is expected to gain on a percentage basis, approximately twice as much as each such Fund's respective Underlying Benchmark when the price of the Underlying Benchmark increases on a given day, and should lose approximately twice as much when such price declines on a given day, before fees and expenses.

The Exchange also proposes to list and trade Shares of the Funds, that seek daily investment results, before fees and expenses that correspond to twice the inverse (-200%) of the daily performance of the Underlying Benchmark (the ''UltraShort Funds''). If each such Fund is successful in meeting its objective, the NAV of the Shares of each such Fund is expected to increase approximately twice as much, on a percentage basis, as the respective Underlying Benchmark loses on a given day, or should decrease approximately twice as much as the respective Underlying Benchmark gains when the Underlying Benchmark rises on a given day, before fees and expenses.

Detailed discussions regarding each of the Underlying Benchmarks, the structure and management of the Funds, the investment objective for each of the Funds, the Portfolio Investment Methodology, policies and procedures for creating and redeeming Shares of the Funds, the Funds' investment techniques, and NAV, among others, can be found in the Notice.[8] In addition, the Exchange states that the Registration Statement for each Fund will provide a detailed description, including, but not limited to, the structure, creation/redemption process, investment objective and strategies, characteristics, tax status, and distributions. Investors are directed to each Fund's Registration Statement for a complete explanation.

Availability of Information Regarding the Shares. The Web sites for the Fund and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (1) The daily current NAV per Share, the prior business day's NAV per Share, and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV per Share as of the time it is calculated (the ''Bid-Ask Price'');[9] (3) calculation of the premium or discount of such price against the NAV per Share; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (5) the applicable prospectus; and (6) other quantitative information.

As described above, the NAV per Share will be calculated and disseminated daily.[10] Amex will disseminate for the Funds on a daily basis by means of the Consolidated Tape Association/Consolidated Quotation High Speed Lines information with respect to the corresponding Indicative Fund Value (as discussed below), recent NAV per Share, and the number of Shares outstanding. The Exchange will also make available on its Web site daily trading volume of the Shares and closing prices of the Shares.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.proshares.com*) or another relevant Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and number of Financial Instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of each Fund. This Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site and/or at the Exchange's Web site at *http://www.amex.com*.

The value of each Underlying Benchmark will be updated intra-day on a real time basis as its components change in price. The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, such as *http://www.ino.com* and *http://www.finance.yahoo.com*. Dow Jones will disseminate the levels for each of the Underlying Indexes at least every 15 seconds from 8 a.m. to 3 p.m. ET and will publish daily Underlying Index levels at approximately 5 p.m. ET each business day on its Web site at *http://www.djindexes.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. In addition, data is also available regarding the underlying component commodities of each Underlying Index from those futures exchanges that list and trade futures contracts on those commodities. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both index constituents and index levels and vendors displaying index levels only).

Real-time dissemination of spot pricing for gold, silver, euro, and Japanese yen is available on a 24-hour basis worldwide from various major market data vendors. Data regarding spot pricing of the Underlying

[7] NAV means the total assets of a Fund including, but not limited to, all cash and cash equivalents or other debt securities, *less* total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, NAV includes any unrealized profit or loss on open swaps and futures contracts and any other credit or debit accruing to a Fund but unpaid or not received by a Fund.

[8] *See* Notice, *supra* note 3. Terms used but not otherwise defined herein shall have the same meanings as referenced in the Notice.

[9] The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[10] The Exchange stated that it would obtain a representation from the Trust, prior to the listing of the Shares, that the NAV per Share will be calculated daily and made available to all market participants at the same time.

Benchmark commodities (gold and silver) is publicly available on a 24-hour basis from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London fix for gold and silver is also disseminated by various market data vendors and is available from the LBMA Web site at *http://www.lbma.org.uk*. The closing and settlement prices of the futures contracts held by the Funds are also readily available from CME, NYMEX, CBOT, ICE/NYBOT, LME, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. There is considerable public price and data information regarding the Underlying Benchmark currencies (euro and Japanese yen). Spot pricing related to the foreign currency exchange is available to investors and market professionals on a 24-hour basis. A variety of public Web sites and professional and subscription services provide market and price information regarding the euro and the yen. Current spot prices are also generally available from foreign exchange dealers.

To provide updated information relating to the Funds for use by investors, professionals, and persons wishing to create or redeem the Shares, the Exchange will disseminate an updated ''Indicative Fund Value.'' The Indicative Fund Value will be disseminated on a per-Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. ET. The Indicative Fund Value will be calculated based on the cash required for creations and redemptions for a Fund, adjusted to reflect the price changes of the Financial Instruments.

Criteria for Initial and Continued Listing. The Funds will be subject to the criteria in Commentary .07(d) of Amex Rule 1202 for initial and continued listing of the Shares. The Funds will accept subscriptions for Shares in Creation Units from Authorized Participants expected to be in a range from $20 to $70 per Share during an initial offering period, commencing with the initial effective date of the prospectus and terminating no later than the 90th day following such date, subject to certain exceptions. The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 50,000 Shares. The Exchange represents that, for the initial and continued listing of the Shares, the Shares must be in compliance with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act.[11]

[11] *See* 17 CFR 240.10A–3.

Trading Rules. The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities and account opening, and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in the Shares. The Shares will trade on Amex until 4 p.m. ET each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127–AEMI. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205–AEMI), stop and stop limit orders for securities that are derivatively priced (Amex Rule 154–AEMI), and the prevention of trade-through transactions of protected quotations (Amex Rule 126A–AEMI) will also apply to the Shares.

Specialist transactions in the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Amex Rule 190(a).[12] The Shares will generally be subject to the Exchange's stabilization rule (Amex Rule 170), except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Shares into parity with (i) The underlying asset or commodity on which the Shares are based, (ii) the NAV of the Shares, or (iii) the futures contract(s) on the underlying asset or commodity on which the Shares are based.[13]

The trading of the Shares will also be subject to certain conflict of interest provisions set forth in Commentary .07(e) to Amex Rule 1202. Lastly, Commentary .07(g)(3) to Amex Rule 1202 prohibits the specialist in the Shares from using any material, non-public information received from any person associated with a member, member organization, or employee of such person regarding trading by such person or employee in the Underlying Index commodities, related futures, or options on futures, or any other related derivatives.

Surveillance. The Exchange represents that its surveillance procedures are adequate to detect and deter violations of Exchange rules relating to the trading of the Shares. The surveillance procedures will be similar to those used for other commodity-based TIRs, Commodity-Based Trust Shares, Currency Trust Shares, and exchange-traded funds and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

The Exchange represents that it currently has in place comprehensive surveillance sharing agreements with ICE, LME, and NYMEX for the purpose of providing information in connection with the trading in futures contracts traded on their respective exchanges comprising the Underlying Benchmarks, and notes that CBOT, CME, and NYBOT are members of the Intermarket Surveillance Group. As a result, the Exchange asserts that market surveillance information is available from relevant futures exchanges, if necessary, due to regulatory concerns that may arise in connection with the futures contracts

Information Circular. Amex will distribute an Information Circular to its members in connection with the trading of the Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security, such as commodity or currency fluctuation risk. Specifically, the Information Circular, among other things, will discuss: (1) What the Shares are and how Shares are created and redeemed; (2) the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules; (3) dissemination information and trading information; (4) applicable suitability rules;[14] (5) that the Fund is subject to various fees and expenses described in the Registration Statement; (6) that there is no regulated source of last-sale information regarding physical commodities and currencies, that the SEC has no jurisdiction over the trading of physical commodities or currencies, and that the CFTC has regulatory jurisdiction over the trading

[12] Amex Rule 190(a) states that no specialist or his member organization, or any member, officer, employee, or approved person therein, may, directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which stock the specialist is registered. *See* Commentary .05 to Amex Rule 190 (exempting specialists registered in a security issued by a trust, listed pursuant to, among other rules, Amex Rule 1202, from the requirements of Amex Rule 190(a)).

[13] *See* Commentary .07(f) to Amex Rule 1202.

[14] The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member. *See* Commentary .05 to Amex Rule 411 (providing heightened suitability requirements for derivative securities seeking to provide investment results that either exceed the performance of an underlying reference asset by a specified multiple or that correspond to the inverse (opposite) of the performance of an underlying reference asset by a specified multiple).

of futures contracts and options on futures contracts; (7) the procedures for purchases and redemptions of Shares and that Shares are not individually redeemable but are redeemable only in one or more Creation Units; (8) any relief, if granted, by the Commission from any rules under the Act; (9) that the trading hours of the Shares will be from 9:30 a.m. to 4 p.m. ET and that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day; and (10) information about the Shares will be publicly available on the Amex Web site and the Funds' Web sites.

Trading Halts. The Exchange represents that the Information Circular will also inform members of Exchange policies regarding trading halts in the Shares. Specifically, trading in the Shares will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, in addition to the parameters set forth in Amex Rule 117, the Exchange will halt trading in the Shares if trading in a significant number of underlying related futures contract(s) is halted or suspended. Third, the Exchange will halt trading if it becomes aware that a Fund's NAV or disclosure of the portfolio composition is not being disseminated or has not been disseminated to all market participants at the same time. Fourth, the Exchange will halt trading in the Shares if the value of an Underlying Benchmark is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the Shares trade on Amex or if an Indicative Fund Value per Share updated every 15 seconds is no longer calculated or available.[15] Fifth, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission notes that it has permitted the listing and trading of exchange-traded fund-like products linked to the performance of underlying currencies and commodities.[18] The Commission further notes that the shares of other UltraFunds and UltraShort Funds based on various securities indexes have previously been approved by the Commission.[19]

Proposed Amendments to Commentary .07 to Amex Rule 1202

The Commission notes that Amex's proposal to permit the listing and trading of TIRs that directly hold any combination of investments in Financial Instruments on the Exchange is subject to existing rules, safeguards, and procedures governing the listing and trading of TIRs, generally, and Commentary .07 to Amex Rule 1202, in particular. Prior to listing and trading on the Exchange, Amex must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of TIRs based on separate Investment Shares or Financial Instruments. In addition, all such securities listed and/or traded under Commentary .07 to Amex Rule 1202, as proposed to be amended, will be subject to the full panoply of Amex rules and procedures that currently govern the trading of equity securities on the Exchange. The Commission believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

Proposal to List and Trade the Shares of the Funds

The Exchange proposes to list and trade the Shares pursuant to Commentary .07 to Amex Rule 1202, as proposed to be amended.[20] Amex represents that the Shares will conform to the existing initial and continued listing criteria under such rule and must be in compliance with Section 803 of the Amex Company Guide and Rule 10A–3 under the Act.[21]

The Commission believes that the proposal to list and trade the Shares of the Funds on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding

[15] If the value of the Underlying Benchmark or the Indicative Fund Value is not being disseminated on at least a 15-second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the value of the Underlying Benchmark or the Indicative Fund Value occurs. If the interruption to the dissemination of the value of the Underlying Benchmark or the Indicative Fund Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See, e.g.*, Securities Exchange Act Release Nos. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (approving the listing and trading of the United States Natural Gas Fund, LP); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex 2005–127) (approving the listing and trading of the United States Oil Fund, LP); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex 2005–072) (approving the listing and trading of the iShares Silver Trust); 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex 2005–059) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (SR–Amex 2005–128) (approving the trading of the Euro Currency Trust pursuant to unlisted trading privileges (''UTP'')); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex 2004–38) (approving the listing and trading of the iShares COMEX Gold Trust); and 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (SR–Amex–2005–032) (approving the trading of streetTRACKS Gold Shares pursuant to UTP). *See also* Securities Exchange Act Release Nos. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex 2006–76) (approving the listing and trading of the DB Multi-Sector Commodity Trust); 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR–Amex 2006–44) (approving the listing and trading of shares of the DB Currency Index Value Fund); 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR–Amex 2006–86) (approving the listing and trading of shares of the PowerShares DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund); 56969 (December 14, 2007), 72 FR 72424 (December 20, 2007) (approving the listing and trading of shares on the GreenHaven Continuous Commodity Index Fund).

[19] *See, e.g.*, Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of shares of the xtraShares Trust); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of shares of the ProShares Trust); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex 2006–101) (approving the listing and trading of shares of the ProShares Trust); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of shares of the ProShares Trust based on international equity indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of shares of the ProShares Trust).

[20] The Commission believes that the Exchange's existing rules and procedures are adequate with respect to the Shares. However, the Commission notes that other proposed series of TIRs may require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of TIRs that are based on a portfolio, at least in part, of non-U.S. equity securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

[21] *See supra* note 11.

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated by means of CTA and Consolidated Quotation High Speed Lines.[23] In addition, the value of each Underlying Benchmark will be updated intra-day on a real time basis as its components change in price. The Indicative Fund Value will be disseminated at least every 15 seconds throughout Amex's trading hours, in accordance with Commentary .07(d)(2)(iii) to Amex Rule 1202, and the NAV of each Fund will be calculated by the Administrator and made available each business day at the times set forth in the Notice.[24] Real-time dissemination of spot pricing for gold, silver, euro, and Japanese yen is available on a 24-hour basis worldwide from various major market data vendors. Data regarding spot pricing of the Underlying Benchmark commodities (gold and silver) is publicly available on a 24-hour basis from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London fix for gold and silver is also disseminated by various market data vendors and is available from the LBMA Web site. The closing and settlement prices of the futures contracts held by the Funds are also readily available from CME, NYMEX, CBOT, ICE/NYBOT, LME, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Spot pricing related to the foreign currency exchange is available to investors and market professionals on a 24-hour basis. A variety of public Web sites and professional and subscription services provide market and price information regarding the euro and the yen. Current spot prices are also generally available from foreign exchange dealers. Moreover, each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.proshares.com*) or another relevant Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and number of Financial Instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of each Fund. Amex will also disseminate via CTA and Consolidated Quotation High Speed Lines various other data, including corresponding Indicative Fund Values, recent NAV per Share, and the number of Shares outstanding. In addition, the Exchange will also make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The Fund's Web site will also contain a variety of other information for the Shares, including a display of the applicable prospectus and quantitative information on a per-Share basis.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the Trust, prior to listing, that the NAV per Share for the Funds will be calculated daily, and that the NAV will be made available to all market participants at the same time.[25] The Exchange has represented that the disclosure of the portfolio composition for each Fund will be made available to all market participants at the same time. The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if, among others: (1) the underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis through one or more major market data vendors during the time the TIRs trade on the Exchange; or (2) the Indicative Fund Value is no longer made available on at least a 15-second delayed basis. Commentary .07(e) to Amex Rule 1202 restricts any equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker in an underlying asset or commodity, related futures or options on futures, or any other related derivatives, unless certain procedures restricting the flow of material, non-public market information are established. In addition, Commentary .07(g)(3) to Amex Rule 1202 states that, in connection with trading the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including TIRs), the specialist registered as such in TIRs may not use any material, non-public information received from any person associated with a member, member organization, or employee of such person regarding trading by such person or employee in the physical asset or commodity, futures or options on futures, or any other related derivatives.

The Commission believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Trading in the Shares will be halted: (1) In the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached; (2) if trading in a significant number of underlying related futures contract(s) is halted or suspended; (3) if the Exchange becomes aware that a Fund's NAV or disclosure of the portfolio composition is not being disseminated or has not been disseminated to all market participants at the same time; [26] (4) if the value of an Underlying Benchmark is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the Shares trade on Amex or if an Indicative Fund Value per Share updated every 15 seconds is no longer calculated or available.[27] With respect to a halt in trading not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under Commentary .07 to Amex Rule 1202, as proposed to be amended.

[23] E-mail from Daniel Mollin, Associate General Counsel, Amex, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated July 9, 2008 (confirming dissemination of quotations and last-sale information regarding the Shares).

[24] *See* Notice, *supra* note 3, at 33471.

[25] *See infra* note 26.

[26] *See also* Securities Exchange Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR–Amex–2008–40; SR–NASDAQ–2008–046; SR–NYSE–2008–39; SR–NYSEArca–2008–50) (adopting, among other things, new Amex Rule 117A and Commentary.01 thereto, which requires that the Exchange halt trading in the Shares once it becomes aware that the NAV for such Shares are not being disseminated to all market participants at the same time).

[27] *See supra* note 15.

(2) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules relating to the trading of the Shares. Specifically, the surveillance procedures will be similar to those used for other commodity-based TIRs, Commodity-Based Trust Shares, Currency Trust Shares, and exchange-traded funds. In addition, the Exchange will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

(3) The Exchange will distribute an Information Circular, the contents of which are more fully described herein, to its members in connection with the trading of the Shares.

(4) The Exchange represents that the Trust is required to comply with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act [28] for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–2008–39), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16614 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58149; File No. SR–FINRA–2008–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Elimination of Certain Fee References in the Incorporated NYSE Rules

July 11, 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 June 26, 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, II, and III below, which Items have been substantially prepared by FINRA. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Incorporated NYSE Rules 311, 342, 345, 346, and 416 to delete references to legacy New York Stock Exchange (''NYSE'') fees that are not charged by FINRA pursuant to those rules.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and at *http://www.finra.org/RulesRegulation/RuleFilings/index.htm.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, NYSE committed to transfer to FINRA certain regulatory revenues for the remainder of 2007. NYSE fees subject to the transfer agreement included a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee [3] (comparable to NASD's Gross Income Assessment) [4] and registration fees for branch offices [5] (comparable to NASD's Branch Office System Processing Fee) [6] and registered representatives [7] (comparable to NASD's registration fees for the registration of representatives or principals).[8]

As part of the consolidation, FINRA evaluated whether to consolidate or eliminate any duplicative fees, as well as whether to maintain or increase any non-duplicative fees. As a result of that process, FINRA determined that a number of fees previously charged by NYSE could be eliminated because they are duplicative of other FINRA fees. On December 31, 2007, NYSE filed a proposed rule change with the Commission to eliminate certain NYSE registration and regulatory fees effective as of January 1, 2008.[9] The current proposed rule change deletes references in the Incorporated NYSE Rules to NYSE fees that were eliminated by NYSE effective as of January 1, 2008, and that are not charged by FINRA pursuant to those rules.

Specifically, the proposed rule change would delete from the Incorporated NYSE Rules references to the following fees:

- The NYSE membership application fee referenced in NYSE Rule 311; [10]
- The NYSE Branch Office Fees referenced in NYSE Rule 342.11; [11]
- The NYSE Registered Persons Fees referenced in NYSE Rule 345.14; [12]
- The Statutory Disqualification Filing Fee and the Statutory Disqualification Review Fee referenced in NYSE Rule 346(f); [13] and
- The late filing fee referenced in NYSE Rule 416(b).[14]

FINRA proposes that the effective date of this proposed change be retroactive to January 1, 2008, to coincide with the NYSE's elimination of these fees as of January 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions

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[28] 17 CFR 240.10A–3.

[29] 15 U.S.C. 78s(b)(2).

[30] *See* 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR–NYSE–2007–70).

[4] *See* Section 1(c) of Schedule A to FINRA's By-Laws (''Schedule A''). The Commission recently approved a new fee structure for the Gross Income Assessment that combines the two legacy fee structures of NASD and NYSE. *See* Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008).

[5] *See* NYSE Rule 342.11.

[6] *See* Section 4(a) of Schedule A.

[7] *See* NYSE Rule 345.14.

[8] *See* Section 4(b) of Schedule A.

[9] *See* Securities Exchange Act Release No. 57093 (January 3, 2008), 73 FR 1654 (January 9, 2008) (SR–NYSE–2007–127) (''Release No. 34–57093'').

[10] FINRA charges its own application fees pursuant to Sections 4(b) and 4(e) of Schedule A.

[11] FINRA charges a similar fee pursuant to Section 4(a) of Schedule A.

[12] FINRA charges a similar fee pursuant to Section 4(b) of Schedule A.

[13] FINRA charges a similar fee pursuant to Section 12 of Schedule A.

[14] FINRA charges a similar fee pursuant to Section 4(g) of Schedule A.

of Section 15A(b)(5) of the Act,[15] which require, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that deleting the references in the Incorporated NYSE Rules to fees that FINRA does not impose pursuant to those rules will reduce confusion and conform the Incorporated NYSE Rules to FINRA's practice.

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–2008–034 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–2008–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–2008–034 and should be submitted on or before August 11, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(5) of the Act[16] and the rules and regulations thereunder.[17]

The Commission notes that FINRA's proposed rule change to eliminate references to the NYSE legacy fees in FINRA's Incorporated NYSE Rules is consistent with NYSE's elimination of these fees that took effect on January 1, 2008.[18] Because these legacy NYSE fees are not charged by FINRA, the Commission believes that it is appropriate for FINRA to remove references to these fees from the Incorporated NYSE Rules.[19] The Commission also believes that approving these changes on a retroactive basis to January 1, 2008, is appropriate because that is the effective date of NYSE's elimination of these fees.[20]

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Granting accelerated approval of the proposed rule change would help reduce any confusion FINRA members may have, because these legacy NYSE fees no longer are being charged, and would conform these Incorporated NYSE Rules to FINRA's current practice. Accordingly, the Commission believes there is good cause, consistent with Sections 15A(b)(5) and 19(b) of the Act,[21] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–FINRA–2008–034) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16599 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78*o*–3(b)(5).

[16] 15 U.S.C. 78*o*–3(b)(5).

[17] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] *See* Release No. 34–57093, *supra* note 9.

[19] 15 U.S.C. 78*o*–3(b)(5).

[20] *See* Release No. 34–57093, *supra* note 9.

[21] 15 U.S.C. 78*o*–3(b)(5) and 78s(b).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58156; File No. SR–FICC–2007–05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change as Amended To Restructure the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates and To Restructure the Watch List

July 15, 2008.

I. Introduction

On April 30, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on May 18, 2007, December 10, 2007, and January 31, 2008, amended proposed rule change SR–FICC–2007–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On April 22, 2008, the Commission published notice of the proposed rule change to solicit comments from interested parties.[2] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57666 (April 15, 2008), 73 FR 21675.

II. Description

FICC is seeking to (i) restructure the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') rules related to fines, clearing fund consequences imposed on members for rule violations, and certain aspects of the watch list and (ii) harmonize its rules with similar rules of FICC's clearing agency affiliates, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC''). DTC and NSCC have filed similar proposed rule changes.[3] FICC's proposed revisions to its fine schedule are set forth in Exhibit 5 to its proposed rule change.

1. Fines

(a) Fines Scheduled for Failure to Submit Financial and Other Information

Members of the GSD and MBSD are assessed fines for failure to submit required financial, regulatory, and other information within the time frames set forth in FICC's rules. Often a member that is fined is a common member of FICC and DTC, FICC and NSCC, or FICC, DTC, and NSCC, (collectively, the ''Clearing Agencies'') which would cause the member to incur multiple penalties for the same offense.[4] FICC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.[5]

In addition, FICC proposes changes to the notes to this section of the fine schedule to make clear that (i) the method by which the reporting requirements will be published and (ii) the determination of the fine amount after the fourth or more occasion of an offense within a twelve-month rolling period will be made by FICC management with the concurrence of the Board or the Credit and Market Risk Management Committee.[6]

(b) General Continuance Standards

Both GSD and MBSD currently impose a fine of $1,000 on a member that fails to notify FICC within two business days of the member's learning of its non-compliance with the general continuance standards for membership or of its becoming subject to a statutory disqualification. Both GSD and MBSD currently impose a $5,000 fine if a member fails to notify FICC of a ''material change'' to its business. A material change currently includes events such as a merger or acquisition involving the member, a change in corporate form, a name change, a material change in ownership, control, or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business.

With respect to both GSD and MBSD, FICC is proposing to amend its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.[7]

(c) Fine Schedule for Late Clearing/Participants Fund Deficiency Payments

GSD and MBSD Netting and Clearing members are also subject to fines for late payments of clearing fund and participants fund deficiency calls. In order to harmonize its fine schedule with NSCC, FICC is proposing to adopt the fine amounts utilized by NSCC for this purpose and to adopt other provisions set forth in the notes to NSCC's fine schedule. As proposed, the first occasion lateness will generate a warning letter to the firm for all deficiency amounts.[8] If the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, FICC will obtain the Board's concurrence for the fine amount. Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount.[9] If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, FICC will obtain the Board's concurrence for the fine amount.

(d) Fine Schedule for Late Settlement Payments

The GSD and MBSD currently fine members for late payment of settlement obligations. FICC is proposing the following to harmonize its fine schedule with those of NSCC. The GSD and MBSD will adopt the deficiency and fine amounts of the NSCC fine schedules. As a result, the first occasion will result in a fine rather than a warning letter as under FICC's current fine schedule. Also, FICC will use a rolling three-month period to determine the number of occasions rather than the current 30-day rolling period. In addition, the fine schedules of GSD and MBSD will be amended to provide that (i) if the number of occasions within the rolling three-month period exceeds four, management will obtain the Board's concurrence of the fine amount and (ii) a payment late by more than one hour will result in a fine equal to the amount applicable for the next highest occasion for the specific deficiency amount. If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, management will obtain the Board's concurrence of the fine amount.

2. Placement on the Watch List and Prohibition Against Return of Excess Clearing Fund as Consequences for Rules Violations

The rules of both GSD and MBSD contain provisions requiring a member to be placed on the watch list and, in certain instances, prohibiting the return of excess clearing fund collateral as consequences for certain rules violations or certain member actions.

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[3] Securities Exchange Act Release No. 57665 (April 15, 2008) [SR–DTC–2007–05]. Securities Exchange Act Release No. 57667 (April 15, 2008) [SR–NSCC–2007–07].

[4] The Clearing Agencies do not view the proposed rule changes as fee reductions because they never intended to charge a common member two or three times for a single violation that trips another clearing agency's rules on the same matter.

DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one used by FICC. *Supra* note 3.

[5] For example, if a firm that is a member of FICC and NSCC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the $200 fine will be split equally between FICC and NSCC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

[6] Under the rules of GSD and MBSD, the terms ''Board'' or ''Board of Directors'' mean the Board of Directors of FICC or a committee thereof acting under delegated authority (''Board''). In this situation, the Board would have to concur with the fine.

[7] DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 3.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine will be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

[8] GSD and MBSD currently impose a fine for a first occasion lateness for its highest deficiency amount.

[9] For example, if a firm's deficiency amount is under $1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm will be fined $200 (*i.e.*, the fine for a third occasion) instead of $100 (*i.e.*, the fine for a second occasion) pursuant to the proposed fine schedule.

For example, the FICC rules require that a member be placed on the watch list and prohibited from receiving the return of excess clearing fund collateral for failure to timely submit a required financial report or other information to FICC. FICC is proposing the deletion of all these provisions because the placement of a member on the watch list and the prohibiting of the return of a member's excess of clearing fund collateral should result from management's monitoring of the member and should not automatically occur because of rules violations.[10]

3. Consequences for Being on the Watch List

Currently, the GSD rules contain a very specific amount by which the clearing fund requirement of a netting member that is placed on the watch list may be increased.[11] The MBSD and NSCC rules contain provisions that are more general in this regard.[12] FICC believes the GSD rules are unnecessarily specific in this regard and should be amended to more closely reflect the MBSD and NSCC rules.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of section 17A(b)(3)(F),[13] which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of section 17A(b)(3)(H)[14] which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes FICC's fines with those of DTC and NSCC, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.[15]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2007–05), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16591 Filed 7–18–08; 8:45 am]

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[10] FICC currently has and would retain the right to deny the return of excess clearing fund collateral in instances where it is concerned about a particular member's financial or operational capability.

[11] The GSD rules currently state that GSD ''may require a Netting Member that has been placed on the Watch List, to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with section 2 of Rule 4 (which additional deposit shall constitute a portion of the Netting Member's Required Fund Deposit) of up to 200 percent of its highest single Business Day's Required Fund Deposit during the most recent 20 Business Days, or such higher amount as the Board may deem necessary * * *.''

[12] For example, MBSD rules state that MBSD ''may require a Participant that has been placed on the Watch List to make and maintain a deposit to the Participants Fund over and above the amount determined * * *.''

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1(b)(3)(H).

[15] 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58154; File No. SR–MSRB–2008–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Rule G–11, on New Issue Syndicate Practices, and Rule G–12, on Uniform Practice

July 15, 2008.

On March 18, 2008, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule-11, on new issue syndicate practices, and Rule G–12, on uniform practice. The proposed rule change was published for comment in the **Federal Register** on April 18, 2008.[3] The Commission received no comment letters about the proposed rule change. On June 26, 2008, the MSRB filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change as modified by Amendment No. 1.

The proposed rule change consists of amendments to Rule G–11 and Rule G–12 that (a) delete Rule G–12(i); (b) consolidate the remaining syndicate practice provisions of Rule G–12 into Rule G–11; (c) delete the syndicate-related sections of Rule G–12; and (d) make minor technical corrections to Rule G–11. A full description of the proposal is contained in the Commission's Notice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[5] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[6] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[7] In particular, the Commission finds that the proposed rule change is consistent with the Act because it will facilitate transactions in municipal securities and protect investors and the public interest by creating a consolidated rule that seeks to avoid inadvertent rule violations and clarifies and modernizes its rules to bring them into line with the realities of current market practice without compromising investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57659 (April 14, 2008), 73 FR 21166 (April 18, 2008) (''Commission's Notice'').

[4] Amendment No. 1 clarifies a broker, dealer or municipal securities dealer's existing obligations and does not add any new requirements. This is a technical amendment and is not subject to notice and comment.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–MSRB–2008–03), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16589 Filed 7–18–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58125; File No. SR–NASDAQ–2008–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 4350 Related to the Direct Registration Program

July 9, 2008.

I. Introduction

On April 1, 2008, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 29, 2008.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Pursuant to NASDAQ Rule 4350(l), Nasdaq requires that all listed securities be eligible to participate in a Direct Registration Program (generally referred to as the Direct Registration System or ''DRS'').[3] However, Rule 4350(a) allowed foreign private issuers to follow its home country practice in lieu of complying with certain provisions of Rule 4350, including those pertaining to DRS under Section (l) of the rule.

NASDAQ is amending its rules to modify the requirement for a foreign private issuer to be eligible to rely on an exception to the requirement to participate in DRS and to clarify the applicability of the DRS-eligibility requirement to book-entry-only securities. NASDAQ will implement the proposed change related to book-entry-only securities immediately upon approval and the proposed change affecting foreign private issuers on March 31, 2009.

The text of the new rule change is below. New rule language is in italics; deletions are in brackets.[4]

Rule 4350. Qualitative Listing Requirements for NASDAQ Issuers Except for Limited Partnerships

(a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: Comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). *In addition, a foreign private issuer must be eligible to participate in a Direct Registration Program, as required by Rule 4350(l), unless prohibited from complying by a law or regulation in its home country.* A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in either its annual reports filed with the Commission or on its Web site each requirement of Rule 4350 that it does not follow and shall describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on NASDAQ shall make the same disclosures in either its registration statement or on its Web site.

(2)–(5) No change.

(b)–(k) No change.

(l) Direct Registration Program

(1) All securities initially listing on NASDAQ on or after January 1, 2007, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) Additional classes of securities of companies which already have securities listed on NASDAQ; (ii) companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S; or, (iii) [non-equity] securities which are book-entry-only.

(2)*(A) Except as indicated in paragraph (2)(B) below, on* [On] and after March 31, 2008, all securities listed on NASDAQ (except [non-equity] securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.

(B) *Until March 31, 2009, a foreign private issuer may follow its home country practice in lieu of the requirements of this Rule 4350(l), provided, however, that such an issuer must follow the requirements of Rule 4350(a) and IM–4350–6 for doing so. Thereafter, the listed securities of such issuers (except securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act unless prohibited from complying by a law or regulation in its home country.*

(3) No change.

(m)–(n) No change.

IM 4350–6 Applicability

1. Foreign Private Issuer Exception and Disclosure. A foreign private issuer (as defined in Rule 3b–4 under the Exchange Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20–F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A–3(b)(1), subject to the exemptions provided in Rule 10A–3(c) under the Exchange Act). *Fourth, a foreign private issuer must comply with Rule 4350(l) (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country.* Finally, a foreign private issuer that elects to follow home country practice in lieu of a requirement of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws *and, in the case of a company prohibited from complying with Rule 4350(l), certifying that a law or regulation in the home country prohibits such compliance.* In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57842 (May 20, 2008), 73 FR 30990 (May 29, 2008) [File No. SR–NASDAQ–2008–031].

[3] For more information on NASDAQ's DRS listing requirement and DRS generally, *see* Securities Exchange Act Release Nos. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–008] and 57062 (December 28, 2007), 73 FR 900 (January 4, 2008) [File No. SR–NASDAQ–2007–101].

[4] Changes are marked to the rule text that appears in the electronic manual of NASDAQ found at *http://nasdaq.complinet.com.*

the company seeks to adopt its first non-compliant practice. In the interest of transparency, the rule requires a foreign private issuer to make appropriate disclosures in the issuer's annual filings with the Commission (typically Form 20–F or 40–F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F–1, 20–F, or 40–F); alternatively, the issuer may provide these disclosures in English on its Web site. The issuer shall disclose each requirement of Rule 4350 that it does not follow and include a brief statement of the home country practice the issuer follows in lieu of the requirements of Rule 4350. If the disclosure is only available on the Web site, the annual report and registration statement should so state and provide the web address at which the information may be obtained.

2.–4. No change.

* * * * *

III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[5] After careful consideration, the Commission finds that the proposed rule change is consistent with the provisions of the Act because it requires foreign private issuers to comply with the same DRS-eligibility rules required of other equity issuers unless the foreign private issuer is prohibited from doing so under its home country laws. The rule change relating to clarification that the DRS-eligibility requirement excludes all book-entry-only securities is consistent with the Act because it allows issuers, broker-dealers, and investors to better determine which securities are required to be facilitated in DRS and which securities are not.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with Nasdaq's obligation under Section 6(b) of the Act 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[6]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASDAQ–2008–031) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16504 Filed 7–18–08; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

[6] In approving the proposed rule change, the Commission notes that it has considered the impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 7 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58160; File No. SR–NSCC–2007–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Restructure Its Rules Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates

July 15, 2008.

I. Introduction

On April 30, 2007, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission''), and on December 10, 2007, and February 12, 2008, amended proposed rule change SR—NSCC–2007–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on April 22, 2008.[2] No comment letters were received on the proposal. This order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57667 (Apr. 15, 2008), 73 FR 21677.

II. Description

The proposed rule change restructures the NSCC rules related to fines and where practicable or beneficial harmonizes them with similar rules of NSCC's affiliates, The Depository Trust Company (''DTC'') and the Fixed Income Clearing Corporation (''FICC'').[3]

A. Fines Scheduled for Failure To Submit Financial and Other Information

NSCC members are assessed fines for failure to submit required financial, regulatory, and other information within the time frame established by NSCC. As part of the effort to harmonize its rules with its affiliates, NSCC is adopting the fine schedule currently used by FICC for this purpose. Pursuant to its filing, members will be fined $300, $600, and $1,500 for their first, second, and third occasion of failing to timely provide financial, regulatory, and other related information. NSCC is also changing the footnotes of this section of the applicable fine schedule to make certain clarifications, including that the determination of the fine amount after the fourth or more occasion of an offense within a twelve month rolling period will be made by the Board of Directors.[4]

Often a member that is fined is a common member of NSCC and FICC, NSCC and DTC, or NSCC, FICC, and DTC, (collectively the ''Clearing Agencies'') which would cause the member to incur multiple penalties for the same offense.[5] When a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies, as appropriate.[6]

[3] DTC and FICC have filed similar proposed rule changes. Securities Exchange Act Release No. 57665 (Apr. 15, 2008), 73 FR 21673 [SR–DTC–2007–05]. Securities Exchange Act Release No. 57666 (Apr. 15, 2008), 73 FR 21675 [SR–FICC–2007–05].

[4] Under NSCC rules, the terms ''Board'' or ''Board of Directors'' mean the Board of Directors of NSCC or a committee thereof acting under delegated authority.

[5] DTC does not currently maintain a fine schedule with respect to late submission of required financial, regulatory, or other information. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is adopting. *Supra* note 3.

[6] For example, if a firm is a member of NSCC and FICC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the $200 fine will be split equally between NSCC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

B. General Continuance Standards

NSCC's rules currently require a member to promptly notify NSCC of the member's non-compliance with general member continuance standards but do not set forth a specific time frame in which to do so and do not provide for the imposition of a fine for not promptly notifying NSCC. In the interest of harmonizing this provision with a similar FICC provision, NSCC is: (a) Requiring the member to make such a notification within two business days; (b) requiring the member to notify NSCC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subjecting the member to a $1,000 fine for failure to timely notify NSCC.

NSCC also currently imposes a fine in the amount of $5,000 if an applicable member fails to notify NSCC of a material change to its business. Pursuant to NSCC's rules, a material change currently includes a merger or acquisition involving the member; a change in corporate form; a name change; a material change in ownership, control, or management; and participation as a defendant in litigation which reasonably could be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business. For uniformity with similar FICC provisions, NSCC is amending its rules so that notice of such events must be provided at least ninety calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably given notice within that time frame.

With respect to both fines, NSCC is amending its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.[7]

C. Fine Schedule for Late Clearing Fund Deficiency Payments

NSCC members are subject to fines for late payments of Clearing Fund deficiency calls. NSCC is amending the footnote to this section of its fine schedule to correspond with that of FICC's fine schedule as proposed by FICC in a separate rule filing.[8] If the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, NSCC will obtain the Board's concurrence for the fine amount. Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount.[9] If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, NSCC will obtain the Board's concurrence for the fine amount.

D. Fine Schedule for Late Settlement Payments

The Clearing Agencies currently have provisions for fines for late payment of settlement obligations. NSCC is amending the footnote in this section of its fine schedule to correspond with those of the other Clearing Agencies. If the number of occasions of late settlement payments within the rolling three-month period exceeds four, NSCC will obtain the Board's concurrence for the fine amount.[10] Furthermore, a payment late by more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late by more than one hour and it is the member's fourth occasion in the rolling three-month period, NSCC will obtain the Board's concurrence for the fine amount.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[11] which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)[12] which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes NSCC's fines with those of DTC and FICC, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NSCC–2007–07) be, and hereby is, approved.[15]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16594 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

The Clearing Agencies do not view the proposed rule changes as fee reductions, because they never intended to charge a common member multiple times for a single violation.

[7] DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 3.

Where the Member is a participant of DTC and is a common member of one or more of the other clearing agencies, the fine would be collected by DTC and allocated equally among other clearing agencies, as appropriate. If the member is not a DTC participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

[8] *Supra* note 3.

[9] For example, if a firm's deficiency amount is under $1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm would be fined $200 (*i.e.* , the fine for a third occasion) instead of $100 (*i.e.* , the fine for a second occasion) pursuant to the proposed fine schedule.

[10] This change requires the removal of language granting NSCC discretion over the fine amount upon consultation with the settling bank only member, member, mutual fund/insurance services member, or fund member.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(H).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58162; File No. SR–NYSEArca–2008–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade 14 Funds of the Commodities and Currency Trust Pursuant to Unlisted Trading Privileges

July 15, 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 July 11, 2008, NYSE Arca, Inc. (''NYSE Arca'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade pursuant to unlisted trading privileges (''UTP'') shares (''Shares'') of fourteen (14) funds (''Funds'') of the Commodities and Currency Trust (''Trust'') based on several currencies, commodities and commodities indexes.

The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Commentary .02 to NYSE Arca Equities Rule 8.200 to permit the listing and trading, including trading pursuant to UTP, of trust issued receipts (''TIRs'') that hold investments in any combination of cash, securities, options on securities and indices, futures contracts, options on futures contracts, forward contracts, equity caps, collars and floors, and swap agreements (the ''Financial Instruments''). [5] This proposal would permit the Exchange to trade the Shares pursuant to UTP under revised Commentary .02 to Rule 8.200. The American Stock Exchange LLC (''Amex'') has filed a proposed rule change to list the Shares. [6]

The Shares represent common units of fractional undivided beneficial interest in, and ownership of, each Fund. Each Fund will invest the proceeds of its offering of Shares in various Financial Instruments that will provide exposure to the Fund's underlying currency, commodity or commodity index. In addition, the Funds will also maintain cash positions in cash or money market instruments for the purpose of collateralizing such positions taken in the Financial Instruments.

Shares of seven (7) of the Funds of the Trust will be designated as Ultra ProShares while the other seven (7) shares of the Trust will be designated as UltraShort ProShares. Each of the Funds will have a distinct investment objective. [7] The Funds will attempt, on a daily basis, to achieve their investment objective by corresponding to a specified multiple or an inverse multiple of the performance of a particular benchmark commodities index, commodity or currency (each an ''Underlying Benchmark'' and collectively, the ''Underlying Benchmarks'') as described in the Amex Proposal.

Six (6) Funds will be based on the following benchmark commodities indexes: (i) The Dow Jones-AIG Commodity IndexSM; (ii) the Dow Jones-AIG Crude Oil Sub-IndexSM; and (iii) the Dow Jones-AIG Agriculture Sub-IndexSM (each, an ''Underlying Index'' and collectively, the ''Underlying Indexes''). Four (4) Funds will be based on the following commodities: (i) Gold; and (ii) silver (each, an ''Underlying Commodity'' and collectively, the ''Underlying Commodities''). Four (4) Funds will be based on the following benchmark currencies versus the U.S. dollar: (1) The Euro; and (2) the Japanese Yen (each, an ''Underlying Currency'' and collectively, the ''Underlying Currencies''). The Exchange proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Benchmark (the ''Ultra Funds''). If a Fund is successful in meeting its investment objective, the net asset value (''NAV'') [8] of the shares of each Fund is expected to gain on a percentage basis, approximately twice as much as each Fund's respective Underlying Benchmark when the price of the Underlying Benchmark increases on a given day, and should lose approximately twice as much when such price declines on a given day, before fees and expenses.

The Exchange also proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses that correspond to twice the inverse (−200%) of the daily performance of the Underlying Benchmark (the ''UltraShort Funds''). If each Fund is successful in meeting its objective, the NAV of the shares of each Fund is expected to increase approximately twice as much, on a percentage basis, as the respective Underlying Benchmark loses on a given day, or should decrease approximately twice as much as the respective Underlying Benchmark gains when the Underlying Benchmark rises on a given day, before fees and expenses.

The Exchange notes that the Commission has permitted the listing and trading on the Exchange and other national securities exchanges of securities linked to the performance of underlying currencies and commodities. [9] The Commission also has

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Permissible securities in connection with Financial Instruments would not include foreign equity securities.

[6] *See* Securities Exchange Act Release No. 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (SR–Amex–2008–39) (''Amex Proposal''). The Commission notes that, in a separate action today, it is approving the Amex Proposal. *See* Securities Exchange Act Release No. 58161 (July 15, 2008).

[7] The Funds are the Ultra DJ–AIG Commodity ProShares, UltraShort DJ–AIG Commodity ProShares, Ultra DJ–AIG Agriculture ProShares, UltraShort DJ–AIG Agriculture ProShares, Ultra DJ–AIG Crude Oil ProShares, UltraShort DJAIG Crude Oil ProShares, Ultra Gold ProShares, UltraShort Gold ProShares, Ultra Silver ProShares, UltraShort Silver ProShares, Ultra Euro ProShares, UltraShort Euro ProShares, Ultra Yen ProShares and UltraShort Yen ProShares.

[8] ''Net asset value'' means the total assets of a Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, net asset value includes any unrealized profit or loss on open swaps and futures contracts, and any other credit or debit accruing to a Fund but unpaid or not received by a Fund.

[9] The Commission has previously approved issues of Commodity-Based Trust Shares, Currency Trust Shares and Commodity Index Trust Shares, which have certain characteristics similar to the proposed TIRs, for exchange listing and trading. *See, e.g.*, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing on the New York Stock Exchange (''NYSE'') of streetTRACKS Gold Trust); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order

approved for trading on the Exchange on a UTP basis under NYSE Arca Equities Rule 5.2(j)(3) UltraFunds, Short Funds and UltraShort Funds of the ProShares Trust.[10]

Proposed Revision to Commentary .02 to Rule 8.200

Shares of each Fund will be generally subject to the rules that apply to TIRs. The Exchange also proposes to revise Commentary .02 to Rule 8.200 in order to permit the listing and trading of TIRs directly holding Financial Instruments. Current Commentary .02 to Rule 8.200 permits the Exchange to list and trade TIRs, including trading on a UTP basis, where the underlying trust, partnership, commodity pool or other similar entity holds ''Investment Shares.'' [11] The term ''Investment Shares'' is defined in Commentary .02(b)(1) as a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. As a result, a TIR that is listed or UTP-traded pursuant to current Commentary .02 to Rule 8.200 is required to be in the form of a ''master-feeder'' structure, whereby the listed or UTP-traded security holds or invests in the security of the fund that is investing in the Financial Instruments. This proposal would provide an alternative for issuers so that a security may be listed and traded, including UTP-traded, on the Exchange that directly invests in or holds Financial Instruments rather than through an additional security of a fund.

The proposal will expand the application of Commentary .02 to Rule 8.200 to both Investment Shares and Financial Instruments. Accordingly, new Commentary .02(b)(4) to Rule 8.200 would be added to define ''Financial Instrument'' as any combination of cash, securities, options on securities and indices, futures contracts, options on futures contracts, forward contracts, equity caps, collars and floors and swap agreements. Throughout Commentary .02 to Rule 8.200, the term ''Financial Instrument'' will be added to ''Investment Shares'' indicating that TIRs directly holding Financial Instruments may be listed and traded, including UTP-traded, on the Exchange.

Additional information regarding the Underlying Indexes, the Commodities Benchmarks, the Currencies Benchmarks, the structure and investment objective of the Funds, the portfolio investment methodology, investment techniques, creation and redemption of Shares is provided in the Amex Proposal.

Availability of Information Regarding the Shares

According to the Amex Proposal, the Web sites for the Funds and/or the Amex, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV per Share and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV per Share as of the time it is calculated (the ''Bid-Asked Price''); (c) calculation of the premium or discount of such price against the NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information.

The NAV per Share will be calculated and disseminated daily. The Amex will disseminate for the Funds on a daily basis by means of CTA/CQ High Speed Lines information with respect to the corresponding ''Indicative Value'' (as discussed below), recent NAV per Share and Shares outstanding. The Amex will also make available on its Web site (*http://www.amex.com*) daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The closing price and settlement prices of the futures contracts held by the Funds are also readily available from the Chicago Mercantile Exchange (''CME''), New York Mercantile Exchange (''NYMEX''), Chicago Board of Trade (''CBOT''), Intercontinental Exchange/New York Board of Trade (''ICE/NYBOT''), London Metal Exchange (''LME''), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Real-time dissemination of spot pricing for gold, silver, euro and Japanese yen is available on a 24-hour basis worldwide from various major market data vendors.

Portfolio Disclosure

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.proshares.com*) or another relevant Web site as determined by the Trust and/or the Amex. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and number of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to Authorized Participants, so that all market participants are provided portfolio composition

approving listing on the American Stock Exchange (''Amex'') of the iShares COMEX Gold Trust); Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (order approving listing on Amex of the iShares Silver Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order granting accelerated approval to list on NYSE Arca the iShares COMEX Gold Trust); Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE 2005–65) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR–NYSE–2006–35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR–NYSEArca–2007–57) (order granting accelerated approval for listing on NYSE Arca of CurrencyShares Trusts); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR–NYSE–2006–17) (approving listing on the NYSE of the iShares GSCI Trust); Securities Exchange Act Release No. 55585 (April 5, 2007), 72 FR 18500 (April 12, 2007) (SR–NYSE–2006–75) (approving for NYSE listing the iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed Trust and iShares GS Commodity Non-Energy Indexed Trust); Securities Exchange Act Release No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR–NYSEArca–2007–112) (order granting accelerated approval to list iShares S&P GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares S&P GSCI Energy Commodity-Indexed Trust; iShares S&P GSCI Natural Gas Commodity-Indexed Trust; iShares S&P GSCI Industrial Metals Commodity-Indexed Trust; iShares S&P GSCI Light Energy Commodity-Indexed Trust; iShares S&P GSCI Livestock Commodity-Indexed Trust; and iShares S&P GSCI Non-Energy Commodity-Indexed Trust).

[10] *See* Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87); Securities Exchange Act Release No. 57017 (December 20, 2007), 72 FR 73955 (December 28, 2007) (SR–NYSEArca–2007–108).

[11] *See* Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006 (SR–PCX–2006–22).

information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at *http://www.proshares.com,* and/or at the Amex's Web site.

Availability of Information About the Underlying Benchmarks

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, *e.g., http://www.ino.com* and *http://www.finance.yahoo.com.* Data regarding each Underlying Index is also available from the respective index provider to subscribers. In addition, data is also available regarding the underlying component commodities of each Underlying Index from those futures exchanges that list and trade futures contracts on those commodities. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both index constituents and index levels and vendors displaying index levels only).

Data regarding spot pricing of the Underlying Commodities (gold and silver) is publicly available on a 24-hour basis from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London fix for gold and silver is also disseminated by various market data vendors and is available from the London Bullion Market Association (''LBMA'') Web site at *http://www.lbma.org.uk.*

Data regarding futures contracts and options on futures contracts in connection with the Underlying Commodities is also available from the NYMEX at *http://nymex.com.* There is considerable public price and data information regarding the Underlying Currencies (euro and Japanese yen). Spot pricing related to foreign exchange is available to investors and market professionals on a 24-hour basis. A variety of public Web sites and professional and subscription services provide market and price information regarding the euro and the yen. Current spot prices are also generally available from foreign exchange dealers.

The value of each Underlying Benchmark will be updated intra-day on a real time basis as its components change in price.

Dissemination of Net Asset Value and Indicative Value

The Administrator calculates and disseminates, once each trading day, the NAV per Share to market participants. The Amex Proposal represents that the Amex will obtain a representation (prior to listing of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Administrator causes to be made available on a daily basis the corresponding Cash Deposit Amounts to be deposited in connection with the issuance of the respective Shares.

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Amex will disseminate an updated Indicative Value. The Indicative Value will be disseminated on a per Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. ET. The Indicative Value will be calculated based on the cash required for creations and redemptions for a Fund adjusted to reflect the price changes of the Financial Instruments.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during this time. The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities Rule 8.200, Commentary .02 sets forth certain restrictions on equity trading permit holders (''ETP Holders'') acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. Rule 8.200, Commentary .02(e)(3) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable physical asset or commodity, related futures or options on futures, or any other related derivatives as may be requested. NYSE Arca Equities Rule 8.200, Commentary .02(e)(4) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable underlying physical asset or commodity, related futures or options on futures, or any other related derivative (including the TIRs). In addition, NYSE Arca Equities Rule 8.200, Commentary .02(e)(1) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable physical asset or commodity, related futures or any other related derivatives unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and any person or entity controlling an ETP Holder. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, and certain of the Financial Instruments held by TIRs including securities, options on securities and indices, commodities, futures contracts, and options on futures contracts, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. The Exchange currently has in place comprehensive surveillance sharing agreements with ICE, LME and NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on their

respective exchanges comprising the Underlying Benchmarks. The Exchange also notes that CBOT, CME and NYBOT are members of the Intermarket Surveillance Group (''ISG'').

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated Indicative Value is not calculated and disseminated and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) NYSE Arca Equities Rule 9.2(a),[12] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Indicative Value is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Funds (by delivery of the Basket Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in each Fund's Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Shares is based.

Trading Halts

The Exchange represents that it will cease trading the Shares of the Funds if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares will also be governed by the trading halt provisions of NYSE Arca Equities Rule 7.34, relating to temporary interruptions in the calculation or wide dissemination of the Indicative Value or the value of the underlying index, as applicable.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the Exchange becomes aware that the NAV for a Fund is not disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act[13] in general and furthers the objectives of Section 6(b)(5)[14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of additional types of commodity and currency-based investments that will enhance competition among market participants, to the benefit of investors and the marketplace.

In addition, the proposed rule change is consistent with Rule 12f–5 under the Exchange Act[15] because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[18]

The Exchange has asked the Commission to waive the 30-day operative delay, provided that the proposed rule change will not be operative prior to the Commission approval of the Amex Proposal. The Exchange believes the waiver of this period is necessary to permit the Exchange to begin trading the Shares at the time trading in the Shares begins on the Amex. The Commission believes such waiver is consistent with the protection of investors and the public interest because the Exchange's proposal is nearly identical to the Amex Proposal, which has been subject to a full notice-and-comment period and

[12] NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 240.12f–5.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] Rule 19b–4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

approved by the Commission.[19] The Exchange's proposal raises no novel or substantial issues and should benefit investors by creating, without undue delay, additional competition in the market for the Shares. For these reasons, the Commission designates the proposal to be operative simultaneous with the Amex Proposal.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–73 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–NYSEArca–2008–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEArca–2008–73 and should be submitted on or before August 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16592 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

[19] *See supra* note 6.

[20] For purposes only of waiving this designation, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58157; File No. SR–DTC–2007–05]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Harmonizing Fines With the National Securities Clearing Corporation and the Fixed Income Clearing Corporation

July 15, 2008.

I. Introduction

On May 15, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on December 10, 2007, amended the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On April 15, 2008, the Commission published notice of the proposed rule change to solicit comments from interested parties.[2] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

II. Description

This filing will conform DTC's fine structure relating to participants not providing financial information in a timely manner to similar fine structures of DTC's clearing agency affiliates, the National Securities Clearing Corporation (''NSCC'') and the Fixed Income Clearing Corporation (''FICC'').[3]

DTC's rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit this information. As part of the ongoing effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.[4]

1. Fines for Late Submissions

If the participant's late submission violates the rules of more than one DTC-affiliated clearing agency (which includes DTC, NSCC, and FICC), the fine amount will be divided equally among those clearing agencies.[5] When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

2. Fines Relating to Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation that outlines the nature of the applicant's business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57665 (Apr. 15, 2008), 73 FR 21675.

[3] Securities Exchange Act Release Nos. 57666 (Apr. 15, 2008), 73 FR 21675 [SR–FICC–2007–05] and 57667 (Apr. 15, 2008) [SR–NSCC–2007–07].

[4] The three clearing agencies do not view the proposed rule changes as fee reductions because they never intended to charge a common member two or three times for a single violation that trips another clearing agency's rules on the same matter.

[5] For example, assume that Firm A is a participant of DTC, FICC, and NSCC and is required to submit its annual audited financial statement within a certain time frame. If participant A is late in its submission of the statement (and this is Firm A's first violation), Firm A will be fined $300 total and would owe $100 to DTC, $100 to FICC, and $100 to NSCC.

letter acknowledges in the letter or representation its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards, then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or continue to act for them on a temporary or other conditional basis.

In order to harmonize the rules of DTC with those of its clearing agency affiliates, DTC will add an additional consequence in this regard whereby a participant will be fined $1,000 if it fails to notify DTC of its non-compliance with any general continuance standard for DTC participation within two business days.

In addition, DTC will add a provision to its fine schedule that would impose a fine in the amount of $5,000 if a participant fails to notify DTC of a ''material change.'' A ''material change'' would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The new provision provides that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that timeframe.

With respect to both $1,000 and $5,000 fines mentioned above, DTC will add an additional provision that if the participant's failure to provide notice of such material change applies to more than one DTC-affiliate clearing agency, the fine amount will be divided equally among the clearing agencies. This is the same approach being adopted above with respect to fines for failure to timely provide requisite financial and other information. When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[6] which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)[7] which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes DTC's fines with those of NSCC and FICC, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[8] and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2007–05), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16604 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(H).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58152; File No. SR–NASDAQ–2008–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

July 14, 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 July 1, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 7050 governing pricing for Nasdaq members using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. Nasdaq will implement the proposed rule change on July 1, 2008.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.[5]

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market by members for all securities.

(1)–(3) No Change.

(4) Fees for executions of contracts other than those executed on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com*.

NASDAQ Options Market shall include execution and clearing fees charged to NASDAQ for executing on away markets, as follows:

	Customer	Firm	MM
AMEX			
	$0.06	$0.63	$0.66
BOX			
Penny Pilot	0.51	0.51	0.51
Non-Penny Pilot	0.06	0.26	0.26
BKX	0.06	0.41	0.41
NDX	0.06	0.42	0.42
MNX	0.06	0.42	0.42
CBOE			
Equity Options	0.06	0.51	0.51
QQQQ	0.06	0.31	0.31
SPY	0.24	0.51	0.51
OEX, XEO	0.42	0.42	0.42
SPX ≥ $1	0.56	0.52	0.52
SPX < $1	0.47	0.52	0.52
MVR	0.46	0.31	0.31
Volatility Indices	0.52	0.57	0.57
DXL	0.56	0.61	0.61
IWM	0.24	0.31	0.31
DJX, MNX, NDX, & RUT	0.34	0.61	0.61
Other indices, ETFs, & HOLDRs	0.24	0.51	0.51
ISE			
Equity Options	0.06	0.24	[0.46] *0.51*
Premium Products**	0.24	0.24	[0.46] *0.51*
BKX, *FTZ*, IJH, IJR, IJS, MFX, MID, MSH, SML, UKX	0.24	0.34	[0.56] *0.61*
RMN, RUI, RUT	0.24	0.39	[0.61] *0.66*
NDX, MNX	0.24	0.40	[0.62] *0.67*
FUM, HSX, POW, TNY, WMX	0.24	0.29	[0.51] *0.56*
[FTZ]	[0.06]	[0.34]	[0.56]
NYSE–Arca			
Penny Pilot	0.51	0.51	0.51
Non-Penny Pilot	0.06	0.56	0.56
BKX	0.06	0.66	0.66
RUT	0.06	0.71	0.71
PHLX			
Equity Options	0.06	0.30	0.51
MNX & NDX Options	0.18	0.30	0.51
Index Options	0.50	0.30	0.26

** Premium products: BBH, BYT, DBA, DBO, DBS, DDM, DGL, DIA, DMA, DSI, DUG, DVY, DXD, EEM, EEV, EFA, ERF, EWA, EWC, EWG, EWH, EWJ, EWT, EWW, EWY, EWZ, FCG, FDG, FDM, FIW, FNI, FXA, FXB, FXC, FXE, FXF, FXI, FXP, *FXY*, GDX, GLD, HHH, HHO, HVY, IAI, IBB, IEF, IGW, ILF, IVE, IVV, IVW, IWB, IWD, IWF, IWM, IWN, IWO, IXX, IXZ, IYE, IYM, IYR, IYT, JLO, KBE, KCE, KIE, KLD, MDY, MOO, MYP, OEF, OIH, OOG, PBW, PGJ, PHO, PMP, PPH, PUF, QID, QLD, RND, RSP, RTH, RUF, SAW, SDS, SHY, SKF, SIN, SMH, SPY, SSO, TAN, TLT, TTH, TWM, UNG, USO, UTH, UWM, UYG, WSI, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XRT.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the fees assessed for execution of options orders entered into NOM but routed to away markets. On June 30, 2008, Nasdaq filed SR–2008–058, a proposal to pass through to Exchange members the actual fees assessed by away markets plus the clearing fees for the execution of orders routed from Nasdaq. Nasdaq collected and organized in chart format the fees to be assessed for routing to each destination exchange.

Nasdaq is filing this proposed rule change to reflect a change proposed by the International Securities Exchange on

June 30, 2008, in SR–ISE–2008–55.[6] In addition, Nasdaq is adding to the list of products that ISE treats as ''premium'' options symbol FXY, which had been inadvertently omitted from Nasdaq's fee schedule. Finally, within Nasdaq's fee schedule for executions occurring at ISE, Nasdaq is proposing to classify options class FTZ as a premium product with a fee of $.24, $.34, and $.61 for customers, firms, and market makers. Options class FTZ had previously been listed in a category by itself with executions fees of $.06, $.34, and $.56 for customers, firms, and market makers. Nasdaq expects that ISE will charge Nasdaq members $.24, $.34, and $.61, respectively, as set forth in Nasdaq's proposed rule language.[7] All fees for markets other than ISE remain unchanged.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls.

Nasdaq is one of seven options markets in the national market system for standardized options. Joining Nasdaq and electing to trade options is entirely voluntary. Under these circumstances, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. The various exchanges have filed these fees with the Commission and it is reasonable for Nasdaq to pass those fees through to its members. As such, Nasdaq believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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, as amended. To the contrary, Nasdaq has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–059 and should be submitted on or before August 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16588 Filed 7–18–08; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 58091 (July 3, 2008), 73 FR 39754 (July 10, 2008) (SR–ISE–2008–55).

[7] *See* e-mail from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Joseph P. Morra, Special Counsel, and Andrew Madar, Attorney-Advisor, Commission, dated July 10, 2008, adding the prior 3 sentences.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11328]

Kansas Disaster #KS–00027

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–1776–DR), dated 07/09/2008.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/22/2008 through 06/16/2008.

EFFECTIVE DATE: 07/09/2008.

Physical Loan Application Deadline Date: 09/08/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2008, Private Non-Profit organizations that provide essential services of a governmental nature mayfile disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Barber, Bourbon, Brown, Butler, Chautauqua, Cherokee, Clark, Clay, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Ellis, Franklin, Gove, Graham, Harper, Hodgeman, Jackson, Jewell, Kiowa, Linn, Logan, Mitchell, Montgomery, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Republic, Riley, Rooks, Rush, Saline, Seward, Sheridan, Smith, Stafford, Sumner, Thomas, Trego, Wallace.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11328.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–16581 Filed 7–18–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11309]

Missouri Disaster Number MO–00029

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1773–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing.

EFFECTIVE DATE: 07/11/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Missouri, dated 06/25/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Polk, Gentry, Livingston, Bates, Daviess, Grundy, Harrison, Mercer, Webster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–16575 Filed 7–18–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11327]

Oklahoma Disaster #OK–00022

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1775–DR), dated 07/09/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/03/2008 through 06/20/2008.

EFFECTIVE DATE: 07/09/2008.

Physical Loan Application Deadline Date: 09/08/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Alfalfa, Beaver, Beckham, Blaine, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Harmon, Harper, Jackson, Kay, Kiowa, Major, Okfuskee, Osage, Ottawa, Roger Mills, Rogers, Tillman, Washita, Woods.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11327.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–16578 Filed 7–18–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11326]

South Dakota Disaster #SD–00018

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1774–DR), dated 07/09/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/02/2008 through 06/12/2008.

EFFECTIVE DATE: 07/09/2008.

Physical Loan Application Deadline Date: 09/08/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 07/09/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Aurora, Bon Homme, Brule, Buffalo, Butte, Charles Mix, Clay, Dewey, Douglas, Gregory, Haakon, Hand, Hanson, Hughes, Hutchinson, Jackson, Lawrence, Lyman, Mccook, Meade, Mellette, Moody, Perkins, Stanley, Tripp, Turner, Ziebach.

And the portions of the Cheyenne River Reservation, The Crow Creek Reservation, and the Lower Brule Reservation that lie within the designated counties.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11326.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–16580 Filed 7–18–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11320]

Wisconsin Disaster Number WI–00014

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

EFFECTIVE DATE: 07/11/2008.

Physical Loan Application Deadline Date: 08/13/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Wisconsin, dated 06/14/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Calumet, Fond Du Lac, Green, Jefferson, Juneau, Kenosha, La Crosse, Marquette, Ozaukee, Racine, Rock, Sheboygan, Washington, Waukesha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–16582 Filed 7–18–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6301]

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Iranian Individuals Rahim Safavi and Mohsen Fakhrizadeh, and Iranian entity the TAMAS Company, Pursuant to Executive Order 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the Acting Under Secretary of State for Arms Control and International Security, in consultation with the Secretary of the Treasury and the Attorney General, has determined that two Iranian individuals and one entity, namely Rahim Safavi, Mohsen Fakhrizadeh and the TAMAS Company, have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the individuals and entity identified in this notice pursuant to Executive Order 13382 is effective on July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, and

person whose property and interests in property are blocked pursuant to the Order.

On July 8, 2008, the Acting Under Secretary of State for Arms Control and International Security, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, designated two individuals and one entity whose property and interests in property are blocked pursuant to Executive Order 13382.

Information on the additional designees is as follows:

1. TAMAS COMPANY. AKA: TAMAS; AKA: NUCLEAR FUEL PRODUCTION COMPANY. Address: No. 84, 20th Street. Northern Kargar Avenue. Tehran, 10000. Iran.

2. YAHYA RAHIM SAFAVI. AKA: RAHIM SAFAVI; AKA: YAHYA RAHIM-SAFAVI; AKA: SAYED YAHYA SAFAVI; AKA: YAHIA RAHIM SAFAWI; AKA: SEYYED YAHYA RAHIM-SAFAVI; AKA: YAHYA RAHIM AL-SIFAWI. Date of Birth: March to September 1952–1953. Place of Birth: Esfahan, Iran.

3. MOHSEN FAKHRIZADEH-MAHABADI. AKA: MOHSEN FAKHRIZADEH; AKA: FAKHRIZADEH. Passport Numbers: A0009228, 4229533.

Dated: July 7, 2008.

John C. Rood,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. E8–16621 Filed 7–18–08; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Delegation of Authority No. 166–3]

Redelegation of Authority 166–2 Providing for the Settlement of Claims Under the Federal Tort Claims Act and 22 U.S.C. 2669–1

By virtue of the authority vested in me by State Department Delegation of Authority No. DA–166–2, I hereby redelegate to the Assistant Legal Adviser and Deputy Assistant Legal Adviser for International Claims and Investment Disputes the functions delegated to me in that Delegation of Authority, including the denial of all claims, except for the function of making any award, compromise or settlement in excess of $10,000.

This Delegation of Authority supersedes DA–166–1.

This Delegation of Authority shall be published in the **Federal Register**.

Dated: July 3, 2008.

John B. Bellinger III,

Legal Adviser, Department of State.

[FR Doc. E8–16629 Filed 7–18–08; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; St. Lucie County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed new river crossing project in the City of Port St. Lucie, St. Lucie County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. George Hadley, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303, Telephone: (850) 942–9650 ext. 3011.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a third east-west bridge crossing over the North Fork of the St. Lucie River in the City of Port St. Lucie, in St. Lucie County, Florida. The proposed improvement would link the Crosstown Parkway on the west to U.S. 1 (SR 5) on the east. The proposed action is known as the Crosstown Parkway Corridor Extension Study and was formerly known as the Third East-West River Crossing Study. The proposed action would provide needed relief to the two existing river crossings which are over capacity. Alternatives under consideration include a No Build Alternative and multiple alternatives that provide a river crossing on a new alignment. Expansion of the two existing river crossings was previously considered and determined to be infeasible.

Coordination with appropriate Federal, State, and local agencies, and private organizations and citizens who have expressed interest in this proposal has been ongoing and will continue. A series of public meetings and workshops have been held in Port St. Lucie as part of the planning efforts for this project and will continue throughout the EIS process. A formal scoping meeting is planned for this project and is anticipated to occur in August of 2008. In addition, public workshops and a public hearing will be held. Public notice will be given of the time and place of the hearing and for future meetings. The Draft EIS will be made available for public and agency review and comment before the public hearing date.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 15, 2008.

George B. Hadley,

Environmental Programs Coordinator, Tallahassee, Florida.

[FR Doc. E8–16574 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–6480; FMCSA–02–11714; FMCSA–03–14223; FMCSA–04–17195; FMCSA–05–21254; FMCSA–06–24015; FMCSA–06–24783]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 1, 2008. Comments must be received on or before August 20, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–6480; FMCSA–02–11714; FMCSA–03–14223; FMCSA–04–17195; FMCSA–05–

21254; FMCSA–06–24015; FMCSA–06–24783, using any of the following methods.

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 11 individuals who have requested a renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Manuel A. Almeida, Ronald B. Brown, Thomas L. Corey, Brian G. Hagen, Donald E. Hathaway, John C. Lewis, William R. Proffitt, Jose M. Suarez, Louis E. Villa, Jr., Barney J. Wade, Richard A. Yeager.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20251; 67 FR 38311; 69 FR 26221; 71 FR 27033; 67 FR 15662; 67 FR 37907; 69 FR 26206; 71 FR 26601; 68 FR 10301; 68 FR 19596; 70 FR 74102; 69 FR 17263; 69 FR 31447; 71 FR 43556; 70 FR 30999; 70 FR 46567; 71 FR 14566; 71 FR 30227; 71 FR 32183; 71 FR 41310). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 20, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision

requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 11, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–16618 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0067]

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 PLAYIN' HOOKEY.

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–2008–0067 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 August 20, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0067. 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 PLAYIN' HOOKEY is:

Intended Use: ''Charter fishing.''

Geographic Region: ''Wisconsin.''

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: July 10, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–16523 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0068]

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 JENA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0068 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 20, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0068. 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 JENA is:

Intended Use: ''Coastwise trade, passenger charters.''

Geographic Region: ''Puget Sound and inland waters of Washington State.''

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: July 10, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–16514 Filed 7–18–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Departmental Offices, Office of Financial Education; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Education within the Department of the Treasury is soliciting comments on a proposed new collection of information concerning the Community Financial Access Pilot Quarterly Report.

DATES: Written comments should be received on or before September 19, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Community Financial Access Pilot, U.S. Department of Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, attention: Louisa Quittman, Director, Community Programs or *Louisa.Quittman@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection of information form(s) and instructions should be directed to Community Financial Access Pilot, Department of Treasury, 1500 Pennsylvania Ave., NW., Washington DC, 20220 attention Louisa Quittman, Director, Community Programs or *Louisa.Quittman@do.treas.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Community Financial Access Pilot Quarterly Report.

Abstract: Information will be collected on a voluntary basis from financial institutions and financial education providers working with the Department of the Treasury on the Community Financial Access Pilot (Pilot). This information is necessary to assess the effectiveness of the Pilot strategies to expand access to financial services and financial education for low- and moderate-income individuals. The information will allow Treasury to assess the effectiveness of each Pilot site strategy and the Pilot as a whole in expanding financial access and financial education.

Current Actions: New collection. The Department of the Treasury will collect information from participating providers on a quarterly basis including the aggregate number of low- and moderate-income individuals who have opened accounts, the aggregate amount in such accounts, and the aggregate number of low- and moderate-income individuals receiving financial education. The Department of the Treasury will not collect any personally identifiable financial information.

Type of Review: New.

Affected Public: Businesses or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 100 respondents, 4 responses per year.

Estimated Total Annual Burden Hours: 2000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and subject to public disclosure in their entirety. You should submit only comments that you wish to make available publicly. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 14, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–16609 Filed 7–18–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Crimes Enforcement Network (FinCEN), Treasury, is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, FinCEN has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. FinCEN's Privacy Act system of records notices were last published in their entirety on August 8, 2005, 70 FR 45756–45761.

The changes throughout the document are editorial in nature and consist principally of a changing the name of FinCEN.001 from ''FinCEN Data Base'' to ''FinCEN Investigations and Examinations System.'' Changes under ''system location'' and ''system manager,'' standardize the language regarding application of the exemptions claimed for each system of records under the headings ''notification procedure,'' ''record access procedures,'' or ''contesting record procedures.''

On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16 entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' It required agencies to publish the routine use recommended by the President's Identity Theft Task Force. As part of that effort, the Department published the notice of the proposed routine use on October 3, 2007, at 72 FR 56434, and it was effective on November 13, 2007. The new routine use has been added to each FinCEN system of records below.

Department of the Treasury regulations require the Department to publish the existence and character of all systems of records every three years (31 CFR 1.23(a)(1)). At the same time that FinCEN is addressing this requirement, it is addressing the requirement to review its current holding pursuant to M–07–16. With respect to its inventory of Privacy Act Systems of records, FinCEN has determined that the information contained in its systems of records is accurate, timely, relevant, complete, and is the minimum necessary to maintain the proper performance of a documented agency function.

Systems Covered by This Notice

This notice covers all systems of records adopted by FinCEN up to January 1, 2008. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: July 11, 2008.

Elizabeth Cuffe,

Deputy Assistant Secretary for Privacy and Treasury Records.

Table of Contents

Financial Crimes Enforcement Network (FinCEN).

FinCEN.001—FinCEN Investigations and Examinations System [formerly: FinCEN Data Base].
FinCEN.002—Suspicious Activity Report System (the SAR System).
FinCEN.003—Bank Secrecy Act Reports System.

Treasury/FinCEN.001

SYSTEM NAME:

FinCEN Investigations and Examinations System—Treasury/FinCEN.

SYSTEM LOCATION:

The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who relate in any manner to official FinCEN efforts in support of the enforcement of the Bank Secrecy Act and money-laundering and other financial crimes. Such individuals may include, but are not limited to, subjects of investigations and prosecutions; suspects in investigations; victims of such crimes; witnesses in such investigations and prosecutions; and close relatives and associates of any of these individuals who may be relevant to an investigation; (2) current and former FinCEN personnel whom FinCEN considers relevant to an investigation or inquiry; and (3) individuals who are the subject of unsolicited information possibly relevant to violations of law or regulations, who offer unsolicited information relating to such violations, who request assistance from FinCEN, and who make inquiries of FinCEN.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective law enforcement and regulation of financial institutions may be maintained in this system of records, including, but not limited to, subject files on individuals, corporations, and other legal entities; information provided pursuant to the Bank Secrecy Act; information gathered pursuant to search warrants; statements of witnesses; information relating to past queries of the FinCEN Data Base; criminal referral information; complaint information; identifying information regarding witnesses, relatives, and associates; investigative reports; and intelligence reports. Records include queries and the results of queries made by FinCEN customers; and FinCEN employees on behalf of investigatory agencies, financial intelligence units, other FinCEN customers, and FinCEN itself.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 5311 et seq.; 31 U.S.C. 310; 31 CFR part 103; Treasury Department Order 180–01 (September 26, 2002).

PURPOSE(S):

The purpose of this system of records is to support FinCEN's efforts to provide a government-wide, multi-source intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering, other financial crimes, and other domestic and international criminal, tax, and regulatory investigations and examinations.

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

Records in this system may be used to:

(1) Provide responses to queries from Federal, State, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding Bank Secrecy Act and other financial crime enforcement;

(2) Furnish information to other Federal, State, local, territorial, and foreign law enforcement and regulatory agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where FinCEN becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Furnish information to the Department of Defense, to support its role in the detection and monitoring of aerial and maritime transit of illegal drugs into the United States and any other role in support of law enforcement that the law may mandate;

(4) Respond to queries from INTERPOL in accordance with agreed coordination procedures between FinCEN and INTERPOL;

(5) Furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to financial law enforcement;

(6) Furnish information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with civil or criminal law proceedings;

(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings;

(8) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to national security and international and the foreign aspects of international narcotics trafficking; and

(9) To appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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, or harm to the security or integrity of this system or other systems

or programs (whether maintained by FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Magnetic media and hard copy.

RETRIEVABILITY:

By name, address, or other unique identifier.

SAFEGUARDS:

All FinCEN personnel accessing the system will have successfully passed a background investigation. FinCEN will furnish information from the system of records to approved personnel only on a ''need to know'' basis using passwords and access control. Procedural and physical safeguards to be utilized include the logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy information; encryption of electronic communications; intruder alarms; and 24-hour building guards. The system complies with all applicable security requirements of the Department of the Treasury.

RETENTION AND DISPOSAL:

FinCEN personnel will review records each time a record is retrieved and on a periodic basis to see whether it should be retained or modified. FinCEN will dispose of all records after twenty years. Records will be disposed of by erasure of magnetic media and by shredding and/or burning of hard copy documents.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

See ''Categories of individuals covered by the system'' above. Pursuant to the provisions of 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), this system is exempt from the requirement that the Record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). See 31 CFR 1.36.

Treasury/FinCEN.002

SYSTEM NAME:

Suspicious Activity Report System (the ''SAR System'')—Treasury/FinCEN.

SYSTEM LOCATION:

The Internal Revenue Service Enterprise Computing Center Detroit (ECCD), 985 Michigan Avenue, Detroit, Michigan 48226–1129 and the Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The SAR System contains information from forms including, but not limited to: Form TD F 90–22.47 (Suspicious Activity Report by Depository Institutions)—to be replaced by FinCEN 111; FinCEN 101 (Suspicious Activity Report by Securities and Futures Industries); FinCEN 102 (Suspicious Activity Report by Casinos and Card Clubs)—formerly TD F 90–22.49; FinCEN 109 (Suspicious Activity Report by Money Services Business)—formerly TD F 90–22.56. Information on these forms concerns:

(1) Individuals or entities that are known perpetrators or suspected perpetrators of a known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against a financial institution, or participants in a transaction or transactions conducted through the financial institution, that have been reported by the financial institution, either voluntarily or because such a report is required under the rules of FinCEN, one or more of the Federal Supervisory Agencies (the Board of Governors of the Federal Reserve System (the Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration NCUA) (collectively, the ''Federal Supervisory Agencies'')), or both.

(2) Individuals or entities that are participants in transactions, conducted or attempted by, at, or through a financial institution, that have been reported because the institution knows, suspects, or has reason to suspect that: (a) The transaction involves funds derived from illegal activities, the transaction is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law; (b) the transaction is designed to evade any regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331; or (c) the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction;

(3) Individuals who are directors, officers, employees, agents, or otherwise affiliated with a financial institution;

(4) Individuals or entities that are actual or potential victims of a criminal violation or series of violations;

(5) Individuals who are named as possible witnesses in connection with matters arising from any such report;

(6) Individuals or entities named as preparers of any such report;

(7) Individuals or entities named as persons to be contacted for assistance by government agencies in connection with any such report;

(8) Individuals or entities who have or might have information about individuals or criminal violations described above;

(9) Individuals or entities involved in evaluating or investigating any matters arising from any such report;

(10) Individuals, entities and organizations suspected of engaging in terrorist and other criminal activities and any person who may be affiliated with such individuals, entities or organizations;

(11) Individuals or entities named by financial institutions as persons to be contacted for further assistance by government agencies in connection with individuals, entities or organizations suspected of engaging in terrorist or other criminal activities; and

(12) Individuals or entities involved in evaluating or investigating any matters in connection with individuals, entities or organizations suspected of

engaging in terrorist or other criminal activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The SAR System contains information reported to FinCEN by a financial institution (including, but not limited to, a depository institution, a money services business, a broker-dealer in securities, and a casino) on a Suspicious Activity Report (''SAR'') that is filed voluntarily or as required under the authority of FinCEN, one or more of the Federal Supervisory Agencies, or under any other authority. The SAR System also may contain information that may relate to terrorist or other criminal activity that is reported voluntarily to FinCEN by any individual or entity through any other means, including through FinCEN's Financial Institutions Hotline. The SAR System also may contain information relating to individuals, entities, and organizations reasonably suspected based on credible evidence of engaging in terrorist or other criminal activities, including information provided to FinCEN from financial institutions regarding such individuals, entities, and organizations. SARs contain information about the categories of persons or entities specified in ''Categories of Individuals Covered by the system.'' The SAR System may also contain records pertaining to criminal prosecutions, civil actions, enforcement proceedings, and investigations resulting from or relating to SARs. Additionally, it will contain records pertaining to criminal prosecutions, civil actions, enforcement proceedings, and investigations relating to institutions required to file reports or under the supervision of one or more of the Federal Supervisory agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 31 U.S.C. 5318(g); 31 U.S.C. 321; and 31 U.S.C. 310; 31 CFR Part 103; Treasury Department Order 180–01 (September 26, 2002).

PURPOSE(S):

The requirements of FinCEN and the Federal Supervisory Agencies create an integrated process for reporting suspicious activity and known or suspected crimes by, at, or through depository institutions and certain of their affiliates. The process is based on a single uniform SAR filed with FinCEN.

The SAR System has been created, as a key part of this integrated reporting process, to permit coordinated and enhanced analysis and tracking of such information, and rapid dissemination of SAR information to appropriate law enforcement and supervisory agencies. The provisions of 31 U.S.C. 5318(g)(4)(B) specifically require that the agency designated as repository for SARs refer those reports to any appropriate law enforcement or supervisory agency.

Data from the SAR System will be exchanged, retrieved, and disseminated, both manually and electronically among FinCEN, the Federal Supervisory Agencies, appropriate Federal, State, and local law enforcement, regulatory, and tax agencies, and State banking supervisory agencies. Agencies to which information will be referred electronically, which in certain cases may involve electronic transfers of batch information, include the Federal Supervisory Agencies, the Federal Bureau of Investigation, the Internal Revenue Service, the United States Secret Service, the United States Customs and Border Protection, U.S. Immigration and Customs Enforcement, the U.S. Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms and Explosives, appropriate federal agencies' Inspector General Offices, the Executive Office of the United States Attorneys and the Offices of the 93 United States Attorneys, State bank supervisory agencies, and certain State law enforcement, regulatory, and tax agencies, which have entered into appropriate agreements with FinCEN. Organizations to which information is regularly disseminated are referred to as SAR System Users. It is anticipated that information from the SAR System will also be disseminated to other appropriate Federal, State, or local law enforcement, regulatory and tax agencies that enter into appropriate agreements with FinCEN. In addition, information may be disseminated to non-United States financial regulatory and law enforcement agencies.

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

These records may be used to:

(1) Provide information or records, electronically or manually, to SAR System Users relevant to the enforcement and supervisory programs and operations of those Users;

(2) Provide SAR System Users and their Executive Departments with reports that indicate the number, amount, individual identity, and other details concerning potential violations of the law that have been the subject of Suspicious Activity Reports;

(3) Provide information or records to any appropriate domestic or non-United States governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law, or charged with the responsibility of enforcing or implementing a statute, rule, regulation, order, or policy, or charged with the responsibility of issuing a license, security clearance, contract, grant, or benefit, when relevant to the responsibilities of these agencies or organizations;

(4) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement;

(5) Disclose on behalf of a SAR System User, the existence, but not necessarily the content, of information or records to a third party, in cases where a SAR System User is a party or has a direct interest and where the SAR System User has concluded that such disclosure is necessary;

(6) Provide information or records to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the SAR System User is authorized to appear, when (a) The SAR System User, or any component thereof; or (b) any employee of the SAR System User in his or her official capacity; or (c) any employee of the SAR System User, where the Department of Justice or the SAR System User has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, when the SAR System User determines that litigation is likely to affect the SAR System User or any of its components and the use of such records by the Department of Justice or the SAR System User is deemed by the SAR System User to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected;

(7) Disclose information or records to individuals or entities to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations, or orders;

(8) In accordance with Executive Order 12968 (August 2, 1995), provide information or records to any appropriate government authority in connection with investigations and reinvestigations to determine eligibility for access to classified information to the extent relevant for matters that are by statute permissible subjects of inquiry;

(9) Provide, when appropriate, information or records to a bar association, or other trade or professional organization performing similar functions, for possible disciplinary action;

(10) Provide information or records to the Department of State and to the United States Intelligence Community, within the meaning of Executive Order 12333 (December 4, 1981) to further those agencies' efforts with respect to national security and international narcotics trafficking;

(11) Furnish analytic and statistical reports to government agencies and the public providing information about trends and patterns derived from information contained on Suspicious Activity Reports, in a form in which individual identities are not revealed;

(12) Disclose information or records to any person with whom FinCEN, the DCC, or a SAR System User contracts to provide consulting, data processing, clerical, or secretarial functions relating to the official programs and operations of FinCEN, DCC, or the SAR System User;

(13) Disclose information to United States intelligence agencies in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, and

(14) To appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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, or harm to the security or integrity of this system or other systems or programs (whether maintained by FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Records are maintained in magnetic media and on hard paper copy.

RETRIEVABILITY:

Data in the SAR System may be retrieved by sectionalized data fields (i.e. , name of financial institution or holding company, type of suspected violation, individual suspect name, witness name, and name of individual authorized to discuss the referral with government officials) or by the use of search and selection criteria.

SAFEGUARDS:

All persons with electronic access to records in the system will have successfully completed a background investigation. All State and local agency personnel, and all Federal personnel outside the U. S. Department of the Treasury with electronic access will have successfully completed appropriate training. Passwords and access controls will be utilized. Signed agreements outlining usage and dissemination rules are required of all non-Treasury agencies before electronic access is authorized. Procedural and physical safeguards include: The logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy documents and magnetic tapes; encryption of electronic communications; intruder alarms and other security devices; and 24-hour building guards. The system complies with all applicable security requirements of the Department of the Treasury.

RETENTION AND DISPOSAL:

Records in this system will be updated periodically to reflect changes, and will be maintained in electronic form as long as needed for the purpose for which the information was collected. Records will then be disposed of in accordance with applicable law.

SYSTEM MANAGER AND ADDRESS:

General Policy: Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183–0039. Computer Systems Maintenance and Administration: Director, IRS Enterprise Computing Center Detroit, 985 Michigan Avenue, Detroit, Michigan 48226–1129

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records in this system may be provided by or obtained from: individuals; financial institutions and certain of their affiliates; Federal Supervisory Agencies; State financial institution supervisory agencies; domestic or foreign governmental agencies; foreign or international organizations; and commercial sources. Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the Record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

Treasury/FinCEN.003

SYSTEM NAME:

Bank Secrecy Act Reports System—Treasury/FinCEN.

SYSTEM LOCATION:

Electronic Records: Currency and Banking Retrieval System, Internal Revenue Service Enterprise Computing Center Detroit (ECCD), 985 Michigan Avenue, Detroit, Michigan 48226–1129 and Treasury Enforcement Communications System, United States Customs and Border Protection, Newington, 7681 Boston Boulevard, Springfield, Virginia 22153–3140. Paper Records: FinCEN Form 105—U.S. Customs and Border Protection, Newington, VA. All other forms, including, but not limited to, FinCEN Form 104, TDF 90.22–1 and Form 8362—Internal Revenue Service, Detroit, MI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

See persons identified in the reports specified below under 'Categories of Records in the System.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or reports filed under the Bank Secrecy Act and its implementing regulations (31 CFR part 103) including, but not limited to, reports made on FinCEN Form 104 (Currency Transaction Report)—formerly IRS Form 4789; FinCEN Form 103 (Currency Transaction Report by Casinos)—formerly IRS 8362; FinCEN Form 103N-rescinded 1/7/07 (Currency Transaction Report by Casinos-Nevada)—formerly IRS Form 8852; FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business)—

formerly IRS Form 8300; FinCEN Form 105 (Report of International Transportation of Currency or Monetary Instruments)—formerly Customs Form 4790; Treasury Form TDF 90–22.1 (Report of Foreign Bank and Financial Accounts); FinCEN Form 110 (Designation of Exempt Person)—formerly Treasury Form TDF 90–22.53; and FinCEN Form 107 (Registration of Money Services Businesses)—formerly Treasury Form TDF 90–22.55. These reports include names of individuals and other entities filing the reports, names of the owners of monetary instruments, the amounts and kinds of currency or other monetary instruments transported, reported, or in foreign banking accounts, account numbers, addresses, dates of birth, and other personal identifiers. (This system does not include Suspicious Activity Reports. Those reports are included in another system of records, ''Suspicious Activity Reporting System—Treasury/FinCEN.002'').

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; 5 U.S.C. 301; 31 U.S.C. 310; 31 CFR part 103; Treasury Department Order 180–01 (September 26, 2002).

PURPOSE(S):

The Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5331 authorizes the Secretary of the Treasury to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and examinations. The Secretary's authority has been implemented through regulations promulgated at 31 CFR part 103. The purpose of this system of records is to maintain the information contained on the reports required under these regulations. This information is disseminated, both electronically and manually, in accordance with strict safeguards, to appropriate Federal, State, local, and foreign criminal law enforcement and regulatory personnel in the official performance of their duties.

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

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to Federal, State, or local agencies, maintaining civil, criminal, or other relevant information, where the agency has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose to appropriate Federal, State, or local agencies engaged in the identification, investigation, and prosecution of violations or potential violations of criminal statutes, information, in a computerized format, to identify or to permit the identification of patterns of suspected criminal activity that fall within the jurisdiction of the agency requesting the information;

(4) Provide information or records to any appropriate domestic or non-United States governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law, or charged with the responsibility of enforcing or implementing a statute, rule, regulation, order, or policy, when relevant to the responsibilities of these agencies or organizations;

(5) Disclose relevant information on individuals to authorized Federal and State agencies through computer matching in order to help eliminate waste, fraud, and abuse in Government programs and identify individuals who are potentially in violation of civil law, criminal law, or regulation;

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2, that relates to an agency's functions relating to civil and criminal proceedings;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Provide information or records to United States intelligence agencies in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism;

(10) Disclose to the public information about Money Services Businesses that have registered with FinCEN pursuant to 31 CFR 103.41, other than information that consists of trade secrets, or that is privileged and confidential commercial or financial information; and

(11) To appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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, or harm to the security or integrity of this system or other systems or programs (whether maintained by FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Records are maintained in magnetic media and on hard paper copy.

RETRIEVABILITY:

By name and other unique identifier.

SAFEGUARDS:

All persons with electronic access to records in the system will have successfully completed a background investigation. All State and local agency personnel, and all Federal personnel outside the U.S. Department of the Treasury with electronic access will have successfully completed appropriate training. Passwords and access controls will be utilized. Signed agreements outlining usage and dissemination rules are required of all non-Treasury agencies before electronic access is authorized. Procedural and physical safeguards include: The logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy documents and magnetic tapes; encryption of electronic communications; intruder alarms and other security devices; and 24-hour building guards. The system complies with all applicable security

requirements of the Department of the Treasury.

RETENTION AND DISPOSAL:

Records in this system will be updated periodically to reflect changes, and will be maintained in electronic form as long as needed for the purposes for which the information was collected. Records will be disposed of in accordance with applicable law.

SYSTEM MANAGER(S) AND ADDRESS:

General Policy: Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183–0039. Computer Systems Maintenance and Administration: Director, IRS Enterprise Computing Center Detroit, 985 Michigan Avenue, Detroit, Michigan 48226–1129 and Director, Office of Information Technology, U.S. Customs and Border Protection, Newington, 7681 Boston Boulevard, Springfield, Virginia 22153–3140.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the Record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

[FR Doc. E8–16610 Filed 7–18–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

IndyMac Bank, F.S.B., Pasadena, CA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for IndyMac Bank, F.S.B., Pasadena, California (OTS No. 03970) and as Conservator for IndyMac Federal Bank, FSB, Pasadena, California (OTS No. 18115) on July 11, 2008.

Dated: July 15, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison Officer.

[FR Doc. E8–16502 Filed 7–18–08; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of 2008 American Eagle Platinum Uncirculated Coin Pricing

Summary: The United States Mint is setting prices for its 2008 American Eagle Platinum Uncirculated Coins.

Pursuant to the authority that 31 U.S.C. 5111(a) and 5112(k) grant the Secretary of the Treasury to mint and issue platinum coins, and to prepare and distribute numismatic items, the United States Mint mints and issues 2008 American Eagle Platinum Uncirculated Coins in four denominations with the following weights: one ounce, one-half ounce, one-quarter ounce, one-tenth ounce. The United States Mint also produces American Eagle Platinum Uncirculated four-coin sets that contain one coin of each denomination. In accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is setting the price of these coins to reflect recent increases in the market price of platinum.

The United States Mint will make available the following 2008 American Eagle Uncirculated Platinum Coins according to the following price schedule:

Description	Price
American Eagle Platinum Uncirculated Coins:	
One ounce platinum coin ..	$2,349.95
One-half ounce platinum coin	1,199.95
One-quarter ounce platinum coin	619.95
One-tenth ounce platinum coin	259.95
Four-coin platinum set	4,289.95

For Futher Information Contact: Gloria C. Eskridge, Associate Director for Sales and Marketing, United States Mint, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: July 14, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–16527 Filed 7–18–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Determination of Presumption of Service Connection Concerning Illnesses Discussed in National Academy of Sciences Report on Gulf War and Health: Updated Literature Review of Sarin

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Persian Gulf War Veterans Act of 1998, Public Law 105–277, title XVI, 112 Stat. 2681–742 through 2681–749 (codified in part at 38 U.S.C. 1118), has determined that there is no basis to establish a presumption of service connection for any of the diseases, illnesses, or health effects discussed in the August 2004 report of the National Academy of Sciences, titled ''Gulf War and Health: Updated Literature Review of Sarin,'' based on exposure to sarin during service in the Persian Gulf during the Persian Gulf War.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319–5847.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

The Persian Gulf War Veterans Act of 1998, Public Law 105–277, title XVI, 112 Stat. 2681–742 through 2681–749 (codified in part at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Public Law 105–368, 112 Stat. 3315, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War. Congress directed NAS to identify agents, hazards,

medicines, and vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War.

Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between exposure to the agent, hazard, medicine, or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to the agent, hazard, medicine, or vaccine; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, medicine, or vaccine, and the illness.

Section 1602 of Public Law 105–277 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War and the occurrence of a diagnosed or undiagnosed illness in humans or animals, the Secretary will publish regulations establishing presumptive service connection for that illness. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although Public Law 105–277 does not define ''credible evidence,'' it does instruct the Secretary to ''take into consideration whether the results (of any study) are statistically significant, are capable or replication, and withstand peer review.'' Simply comparing the number of studies that report a significantly increased relative risk to the number of studies that report a relative risk that is not significantly increased is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between exposure to an agent, hazard, or medicine or vaccine and the subsequent development of the particular illness. Because of differences in statistical significance, confidence levels, control for confounding factors, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific illnesses.

II. NAS Reports on Sarin

NAS issued its initial report titled, *Gulf War and Health, Volume 1: Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines,* on January 1, 2000. In that report, NAS limited its analysis to the health effects of depleted uranium, the chemical warfare agent sarin, vaccinations against botulism toxin and anthrax, and pyridostigmine bromide, which was used in the Gulf War as a pretreatment for possible exposure to nerve agents. On July 6, 2001, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report, including sarin. See 66 FR 35702.

NAS issued a supplemental report, titled ''Gulf War and Health: Updated Literature Review on Sarin'' in August 2004. In that report, the Committee focused on the health effects associated with exposure to sarin and related compounds, including relevant epidemiologic studies. This Notice addresses the August 2004 Update on sarin.

III. The Committee's Review

In the August 2004 Update on sarin, the Committee reviewed the peer-reviewed literature published since its earlier 2000 report on health effects associated with exposure to sarin and related compounds. These included both animal and human studies. In reviewing published studies, the Committee based its determinations on the strength of the evidence of associations between compound exposure and human health effects as reported in those studies. The Committee also considered other relevant issues, including exposure to multiple chemicals and genetic susceptibilities.

The literature search on sarin and cyclosarin located about 250 articles published after the 2000 report. The Committee relied only on published peer-reviewed articles for their review, although each article was carefully reviewed for its relevance and quality. The Committee relied primarily upon epidemiological studies that involved humans. Animal studies had a lesser role in its assessment of the potential relationship between sarin exposure and health effects, and were used, as in previous NAS studies, primarily for making assessments of biological plausibility in support of epidemiological findings.

The Committee reviewed 19 epidemiological studies of sarin health effects published since its original 2000 report. These included three studies on non-Gulf War veterans, four studies of Gulf War veterans potentially exposed at Khamisiyah, six population-based studies of U.S. and U.K. Gulf War veterans using self-reported exposures, and six studies of specific military units of Gulf War veterans also using self-reported exposures. They also looked again at all of the studies used in the 2000 report. The non-Gulf War veteran studies reviewed in both the 2004 update and the earlier 2000 report were based on U.S. military volunteers who had been exposed several decades ago to non-lethal doses of sarin and other chemical warfare agents; on industrial workers with documented acute exposure to sarin; and on victims of the sarin terrorist attacks in Matsumoto City in 1994 and Tokyo in 1995. The Committee pointed out that a major limitation of virtually all human studies is a lack of good exposure information.

The Committee report pointed to the uncertainties surrounding the Department of Defense (DoD) sarin exposure assessment for Khamisiyah, and how those uncertainties limit the ability of studies that rely upon that modeling data to provide strong evidence for the presence or the absence of any association between sarin exposure and health outcomes. They stated, ''none of the studies using exposure information showed persistent neurological effects in Khamisiyah-exposed troops compared to non-Khamisiyah exposed troops. Because of the uncertainty in the exposure assessment models those studies do not provide strong evidence for or against the presence of neurologic effects.'' Therefore, the studies based upon the DoD Khamisiyah modeling had little impact on the Committee's findings.

The Committee also reported on new published data regarding experimental animals that were designed to mimic the potential exposures in the Gulf War. These data had precipitated the interest in an updated study of sarin health effects. The Committee reported that the data were an important step in ''determining whether a biologically plausible mechanism could underlie any long-term effects of low exposure to chemical verge agents, but more work

needs to be conducted to elucidate potential mechanisms and clarify how the cellular effects are related to any clinical effects that might be seen.''

The Committee reported that, in the absence of carefully designed human studies expressly of sarin's or cyclosarin's long-term health effects at doses that do not produce acute signs and symptoms, the Committee concludes that the data remain inadequate or insufficient to determine whether persistent long-term effects are associated with low-level sarin exposure.

At a briefing to VA in August 2004, when questioned about whether NAS emphasis on human studies might overlook health concerns revealed only in laboratory animal studies, the head of the Committee stated that the Committee did thoroughly review available animal studies and taken together, they failed to show consistent biological effects that could be plausibly tied to potential clinical effects in humans. He added that future animal studies might change that result.

IV. The Committee's Conclusions

In its report, the Committee weighed the strengths and limitations of all the epidemiological evidence reviewed for the August 2004 Update and in Gulf War and Health Volume 1, and reached its conclusions by interpreting the new evidence in the context of the entire body of literature. The Committee classified the evidence of an association between exposure to sarin and cyclosarin and a specific health outcome with reference to five categories: sufficient evidence of a causal relationship, sufficient evidence of an association, limited/suggestive evidence of an association, inadequate/insufficient evidence of an association, and limited/suggestive evidence of no association.

• Sufficient Evidence of a Causal Relationship: This category means the evidence is sufficient to conclude that there is a causal association between exposure to a specific agent and a specific health outcome in humans. The evidence is supported by experimental data and fulfills the guidelines for sufficient evidence of an association. The evidence must be biologically plausible and satisfy several of the guidelines used to assess causality, such as: strength of association, dose-response relationship, consistency of association, and a temporal relationship.

The Committee found there is sufficient evidence of a causal relationship between acute high-dose exposure to sarin and acute cholinergic syndrome that is evident seconds to hours subsequent to sarin exposure and resolves in days to months. The Committee noted that acute cholinergic syndrome has been recognized for decades, and that the syndrome, as well as cholinergic signs and symptoms, is evident seconds to hours after exposure and usually resolves in days to months.

• Sufficient Evidence of an Association: This category means the evidence is sufficient to conclude that there is a positive association. That is, a consistent positive association has been observed between exposure to a specific agent and a specific health outcome in human studies in which chance and bias, including confounding, could be ruled out with reasonable confidence. For example, several high-quality studies report consistent positive associations, and the studies are sufficiently free of bias, including adequate control for confounding.

The Committee made no conclusions in this category.

• Limited/Suggestive Evidence of an Association: This category means the evidence is suggestive of an association between exposure to a specific agent and a specific health outcome, but the body of evidence is limited by the inability to rule out chance and bias, including confounding, with confidence. For example, at least one high-quality study reports a positive association that is sufficiently free of bias, including adequate control for confounding. Other corroborating studies provide support for the association, but they are not sufficiently free of bias, including confounding. Alternatively, several studies of lower quality show consistent positive associations, and the results are probably not due to bias, including confounding.

The Committee found there is limited/suggestive evidence of an association between exposure to sarin at doses sufficient to cause acute cholinergic signs and symptoms and a variety of subsequent long-term neurological effects. The Committee noted that many health effects are reported in the literature to persist after such high-dose sarin exposure: fatigue, headache, visual disturbances (asthenopia, blurred vision, and narrowing of the visual field), asthenia, shoulder stiffness, and symptoms of posttraumatic stress disorder. The Committee further stated that such sarin exposure has also been followed by abnormal test results, of unknown clinical significance, on the digit symbol test of psychomotor performance, EEG records of sleep, event-related potential, visual evoked potential, and computerized posturography.

The Committee based its conclusion on the persistent effects seen in retrospective studies of three exposed populations in which acute cholinergic signs and symptoms were documented as acute effects of exposure. However, the Committee explained that while a review of the literature published since the Committee's initial report confirmed the effects seen in those populations, the data, taken together, were not adequate to increase confidence in the evidence to that of sufficient evidence of an association.

• Inadequate/Insufficient Evidence: This category means the evidence is of insufficient quantity, quality, or consistency to permit a conclusion regarding the existence of an association between exposure to a specific agent and a specific health outcome in humans.

The Committee found there is inadequate/insufficient evidence to determine whether an association does or does not exist between exposure to sarin at low doses insufficient to cause acute cholinergic signs and symptoms and subsequent long-term adverse neurological health effects. In the absence of carefully designed human studies expressly of sarin or cyclosarin's long-term health effects at doses that do not produce acute signs and symptoms, the Committee concluded that the data remain inadequate or insufficient to determine whether such long-term effects are associated with low-level sarin exposure.

The Committee also found there is inadequate/insufficient evidence to determine whether an association does or does not exist between exposure to sarin and subsequent long-term cardiovascular effects. Studies of persistent cardiovascular effects after sarin exposure have been inconsistent. Therefore, the Committee concluded that the data are inadequate or insufficient to determine whether an association exists.

• Limited/Suggestive Evidence of No Association: This category means the evidence is consistent in not showing a positive association between exposure to a specific agent and a specific health outcome after exposure of any magnitude. A conclusion of no association is inevitably limited to the conditions, magnitudes of exposure, and length of observation in the available studies. The possibility of a very small increase in risk after exposure studied cannot be excluded.

The Committee made no conclusions in this category.

V. Response to the NAS Report

After careful review of the findings of the August 2004 NAS report, the Secretary has determined that the conclusions contained in the report do not provide adequate basis to support a presumption of service connection for any health condition resulting from sarin exposure. Specifically, the Secretary has determined that the 2004 NAS Committee conclusions concerning both acute high-dose exposure to sarin and low-level exposure to sarin are consistent with the findings in the 2000 NAS report, and therefore do not warrant any change in current VA policy.

Following the 2000 NAS report, VA determined that a presumption based on acute high-dose exposure was not warranted for a number of reasons. First, VA and Department of Defense have determined, with a high degree of confidence, that no service members were exposed to levels of sarin sufficient to induce acute cholinergic syndrome. Further, if such exposures had occurred, the symptoms would have been present within seconds to hours following exposure and would be compensable by VA on a direct service-connection basis. Additionally, any long-term neurological effects would be compensable under VA presumptions for undiagnosed illness. *See* 38 CFR 3.317. Finally, because it is very unlikely that a presumption would benefit anyone, such a presumption would likely be confusing and have a negative impact on the claims adjudication process.

Nothing in the 2004 NAS report changes the bases for VA's prior determination. The 2004 report notes that current available information is ''consistent with the absence of reports of acute cholinergic symptoms by medical personnel or veterans'' and that the level of exposure experienced by service members during the Gulf War ''would have been insufficient to produce the cholinergic syndrome.''

Similarly, the Secretary has determined that the conclusions contained in the 2004 NAS report regarding long-term health effects from exposure to low levels of sarin are essentially identical and lend further support to the conclusions contained in the 2000 report. Based upon the findings contained in the 2000 NAS report, the Secretary determined that there was not an adequate basis to support establishing a presumption of service connection for any health problem resulting from sarin exposure. NAS's findings in the 2004 Update provide further support for existing VA policy on these issues.

In conclusion, the Secretary has determined that the findings in the 2004 NAS report did not provide any new basis to establish a presumption of service connection for any diseases, illnesses, or health effects resulting from exposure to sarin during service in the Persian Gulf during the Persian Gulf War. Therefore, the Secretary has determined that there is no scientific basis to revise earlier policy determinations published in the **Federal Register** at 66 FR 35702 on July 6, 2001, on health effects from exposure to sarin based upon the NAS's 2000 Report.

Approved: July 11, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–16525 Filed 7–18–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
July 21, 2008

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 302, 303, 304, 305, and 308
Child Support Enforcement Program; Medical Support; Final Regulation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 304, 305, and 308

RIN 0970–AC22

Child Support Enforcement Program; Medical Support

AGENCY: Administration for Children and Families, Office of Child Support Enforcement (OCSE).

ACTION: Final regulation.

SUMMARY: This regulation revises Federal requirements for establishing and enforcing medical support obligations in Child Support Enforcement (CSE) program cases receiving services under title IV–D of the Social Security Act (the Act). The changes: require that all support orders in the IV–D program address medical support; redefine reasonable-cost health insurance; require health insurance to be accessible, as defined by the State; and make conforming changes to the Federal interstate, substantial-compliance audit, and State self-assessment requirements.

DATES: *Effective Date:* This regulation is effective July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Crystal Rodriguez, OCSE Division of Policy, 202–401–1381, e-mail: *thomas.miller@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final regulation is published under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, that may be necessary for the efficient administration of the title IV–D program.

This rule also is published in accordance with section 452(f) of the Act, as amended by section 7307 of the Deficit Reduction Act of 2005 (DRA of 2005), which directs the Secretary to issue regulations which require that State agencies administering IV–D programs ''enforce medical support included as part of a child support order whenever health care coverage is available to the noncustodial parent at reasonable cost.'' Section 7307 of the DRA of 2005 also added two additional sentences to section 452(f) of the Act: ''A State agency administering the program under this part [title IV–D] may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part [title IV–D].'' And: ''For purposes of this part, the term 'medical support' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.''

This regulation also is published in accordance with section 466(a)(19) of the Act, as amended by section 7307 of the DRA of 2005, which requires States to have in effect laws requiring the use of procedures under which all child support orders enforced pursuant to title IV–D of the Act ''shall include a provision for medical support for the child to be provided by either or both parents.''

Background

Recognizing that State Child Support Enforcement program efforts to secure and enforce medical support orders against child support obligors had met with limited success, Congress enacted the Child Support Performance and Incentive Act of 1998 (CSPIA). CSPIA directed the Secretaries of HHS and the Department of Labor (DOL) to establish a Medical Child Support Working Group (Working Group). The Working Group included 30 members representing: Federal and State CSE programs, employers, payroll professionals, group health plans, and children's advocates. The Working Group identified impediments to the effective enforcement of medical support by State IV–D agencies and made recommendations to eliminate them.

A final report, *21 Million Children's Health: Our Shared Responsibility,* was jointly transmitted to Congress by the Secretaries of HHS and DOL on August 16, 2000. This final rule responds to several of the Working Group's key recommendations. After review of *21 Million Children,* OCSE consulted with a wide range of program stakeholders in 2001 and 2002, including State and local workers and administrators, national organizations, advocates, and other parties interested in medical support enforcement. These consultations explored the feasibility and impact of the Working Group's recommendations, establishing which recommendations had wide support.

Additionally, HHS's Health Care Coverage Among Child Support-Eligible Children study, published in 2002 after the Working Group's Report, suggests that untapped employer-sponsored insurance through custodial mothers and their spouses might reduce the share of children without private health insurance more significantly than similar insurance through noncustodial parents, for a variety of reasons, including availability, accessibility, cost, and preference. ''Half of child support-eligible children living with their mothers are currently covered by [employer-sponsored] insurance. Indeed, the Working Group's decision matrix to determine appropriate health insurance coverage, presented in *21 Million Children,* contains a preference for using the custodial parent's (or step-parent's) health insurance. The Administration's legislative proposal requiring States to seek medical support from either parent, and to enforce, at their option, an order that a custodial parent provide medical support is addressed in this legislation and also meets the requirements in section 7307 of the Deficit Reduction Act of 2005 (Pub. L. 109–171).

Provisions of the Regulation and Changes Made in Response to Comments

The Notice of Proposed Rule Making (NPRM) was published in the **Federal Register** on September 20, 2006. During the comment period, we received 36 letters generating 308 comments. On the whole, comments were positive and welcomed the proposed update of medical support regulations, particularly with respect to the definition of reasonable cost and the authority to close cases in which an individual in a Medicaid only, child-only case is not cooperating with the IV–D agency. We made a number of changes to the proposed regulations to accommodate practices already in place in States that are leaders in seeking medical support for children, for example by eliminating a proposed specific order of allocating wage withholdings between child support and medical support which employers would have been required to follow. To impose a requirement now, when States have moved forward without Federal guidance or mandate, would be unfair to those States and contrary to our commitment to State flexibility. On the other hand, we did not agree with comments to expand States' authority to close Medicaid-only, child-only cases to include authority to close any Medicaid-

only case, because the authority would be overbroad and inappropriate when assignment and cooperation with the IV–D agency is required in such cases.

Changes made in response to comments are discussed in more detail under the Response to Comments section of this preamble.

Section 302.56—Guidelines for Setting Child Support Awards

Under § 302.56(c)(3), the State guidelines for setting and modifying child support awards must address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31 which defines cash medical support, reasonable cost, and petitioning the court or administrative authority to include health insurance. In response to comments, we expanded the cross-reference to include all of § 303.31, rather than just paragraph (b) which states that the State IV–D agency must petition the court or administrative authority to include health insurance when the order is entered or modified and establish written criteria to identify orders that do not address the health care needs of children.

Section 303.7—Provision of Services in Interstate IV–D Cases

Section 303.32 mandates the use of the National Medical Support Notice (NMSN) to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order. We added ''§ 303.32'' to § 303.7(c)(7)(iii), which governs responding State responsibilities in processing and enforcing orders in interstate cases. This is a necessary technical correction identified during the review of comments on the proposed rule.

Section 303.11—Case Closure Criteria

Under § 303.11(b)(11) of this regulation, in order to be eligible for closure, a case must meet certain criteria. In response to comments received on the proposed regulation, the final regulation clarifies that case closure under paragraph (b)(11) is only authorized if the recipient of services is not required to cooperate with the IV–D agency as a condition of receiving Medicaid services.

Section 303.11(b)(10) was revised in response to comments with language similar to that in paragraph (b)(11) to read as follows: ''In order to be eligible for closure, the case must meet at least one of the following criteria in a non-IV–A case receiving services under § 302.33(a)(1)(i) or (iii), or under § 302.33(a)(1)(ii) when cooperation with the IV–D agency is not required of the recipient of services, the IV–D agency is unable to contact the recipient of services within a 60 calendar day period despite an attempt of at least one letter sent by first class mail to the last known address.''

Section 303.31—Securing and Enforcing Medical Support Obligations

Section 303.31(a)(1) defines ''cash medical support'' as ''an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.'' A cash medical support collection would be considered current support only if the support was paid timely and in the specific amount required in the order to be paid periodically. Should that amount not be paid timely, the unpaid obligation becomes past-due just like any unpaid current child support obligation. In addition, if a family is receiving Medicaid and has assigned rights to cash medical support but is no longer receiving TANF, current cash child support would be paid to the family and assigned current cash medical support would be paid to the Medicaid agency.

Under § 303.31(a)(2), health insurance is defined to include fee for service, health maintenance organization, preferred provider organization, and other types of coverage which is available to either parent, under which medical services could be provided to dependent child(ren).

Under § 303.31(a)(3), cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations, or court rule having the force of law or State child support guidelines adopted in accordance with 45 CFR 302.56. In applying the five percent or alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to existing coverage or the difference between self-only and family coverage.

A State would compute the five percent standard based on the income of the parent being ordered to secure, or pay for private health insurance coverage. The five percent reasonableness standard would be applied to the parent who is ordered to pay cash medical support for the premium of health insurance, whether it is provided by the obligated parent or another parent. If both parents are ordered to contribute to the cost of the premium, then the individual cost could not be more than five percent of each parent's income (or the alternative standard adopted by the State). Similarly, if a noncustodial parent is ordered to pay $50 a month to reimburse the custodial parent for out-of-pocket medical costs not covered by insurance, the five percent reasonableness standard would be applied to the obligated parent's income. Therefore, since the facts of a particular case would vary from case to case, a State would need to determine at the time the order is entered to whose income the five percent standard is applied. States should establish guidelines for applying the five percent standard as appropriate.

In response to comments, we added ''the cost of'' before ''private health insurance,'' substituted the phrase ''the parent responsible for providing medical support'' for ''obligated parent,'' and added ''in State law, regulations, or court rule having the force of law or'' to recognize how States adopt such standards.

Section 303.31(b)(1) requires the State to petition the court or administrative authority to include private health insurance coverage in the support order if it is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support at reasonable cost, as defined under paragraph (a)(3), in new or modified court or administrative orders for support.

Under § 303.31(b)(2), if private health insurance described in paragraph (b)(1) is not available at the time the order is entered or modified, the IV–D agency must petition to include cash medical support that is reasonable in cost, as defined in paragraph (a)(3), in new or modified orders until such time as private health insurance, that is accessible and reasonable in cost as defined under paragraph (a)(3), becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance coverage. It is not mandatory that a State petition to modify an order that includes cash medical support if the State learns that health insurance is now available. However, delaying petitioning for health insurance coverage for as long as three years would not be in the best interests of the children. If the order includes

language that requires health insurance be provided should it become available in the future, and that cash medical support is ordered until such time, the need to petition to modify the order and allow the State to take steps to immediately secure private health insurance coverage for the children would be avoided. Absent such a provision, the State would need to petition to modify the order to take advantage of the currently available coverage.

In response to comments, we added the term ''private'' before ''health insurance'' in § 303.31(b)(1) and (2) for clarity. We also substituted, in paragraph (b)(1) and (2), the phrase ''the parent responsible for providing medical support'' for ''obligated parent'' for consistency with the parallel change to § 303.31(a)(3). We also changed the word ''ordered'' to ''sought'' in paragraph (b)(2) for consistency with the concept that IV–D agencies petition the court or administrative authority to establish support orders. And finally, we added the phrase ''that is reasonable in cost, as defined in paragraph (a)(3) of this section'' after the term ''cash medical support'' in § 303.31(b)(2) for consistency with paragraph (b)(1).

Section 303.31(b)(3) requires a State agency to establish written criteria to identify orders that do not address the health care needs of children based on—

(i) Evidence that private health insurance that is accessible to the child(ren), as defined by the State, may be available to either parent at reasonable cost, as defined under paragraph (a)(3); and

(ii) Facts, as defined by State law, regulation, procedure, or other directive, and review and adjustment requirements under § 303.8(d), which are sufficient to warrant modification of the existing support order to address the health care needs of children in accordance with § 303.31(b)(1).

In response to comments we added the word ''private'' before health insurance and reference to accessibility and reasonable cost to subparagraph (i). We also removed reference to paragraph (b)(2) at the end of subparagraph (ii) in response to comments.

Section 303.31(b)(4) requires IV–D agencies to petition to modify support orders to include private health insurance and/or cash medical support in accordance with paragraphs (b)(1) and (2). In response to comments, we added ''private'' before ''health insurance'' for clarity.

Section 303.31(b)(5), under the proposed rule, required the IV–D agency to notify the Medicaid agency when a new or modified order includes health insurance and/or cash medical support. In response to comments it was deleted and § 303.31(b)(6) was renumbered as (b)(5) and requires that the IV–D agency periodically communicate with the Medicaid agency to determine whether there have been lapses in health insurance coverage for Medicaid applicants and recipients.

Section 303.31(c) requires the IV–D agency to inform an individual who is eligible for services under § 302.33 that medical support services will be provided and to provide the services specified in § 303.31(b). In response to comments, ''enforcement'' is deleted from the subsection.

Section 303.32—National Medical Support Notice (NMSN)

Section 303.32(a) was amended to include reference to use of the NMSN to enforce the provision of health care coverage for children of custodial parents, at State option, in addition to noncustodial parents. A similar change was made to § 303.32(c)(6) to require employers to notify the State about the termination of employment of custodial parents if the State has opted to use an NMSN to enforce the custodial parent's obligation to provide health care coverage for his/her children.

Proposed changes to § 303.32(c)(4), which would have prioritized employers withholding of various support obligations if there were insufficient wages to satisfy all obligations, were removed in response to comments received.

Section 304.20(b)(11)—Services and Activities for Which FFP Is Available

Under § 304.20(b)(11), FFP is available for services and activities under approved IV–D State Plans, including required medical support activities as specified in §§ 303.30, 303.31, and 303.32. We added ''and 303.32.'' after ''§§ 303.30, 303.31''.

Section 304.23(g)—Services and Activities for Which FFP Is Not Available

In response to comments to correct an error in current regulations, the cross-reference in § 304.23(g) has been corrected to refer to FFP as not being available for costs associated with cooperative agreements with Medicaid agencies under section 1912(a)(2) of the Act. We replaced reference to ''§§ 303.30, and 303.31'' with ''section 1912(a)(2) of the Act.''

Section 305.63(c)(5)—Providing Services Required in 75 Percent of the Cases Reviewed During a Substantial Compliance Audit

Under § 305.63(c)(5), for the purposes of optional Federal audits to determine substantial compliance with requirements, a State must provide certain medical support services, including all the requirements under § 302.32, and use of the NMSN in at least 75 percent of the cases reviewed. We added ''and § 302.32'' after ''under § 303.31''.

Section 308.2—Required Medical Support Compliance Criteria for State Self-Assessment

Under § 308.2(e), for purposes of the State's annual self-assessment review and report, a State must evaluate whether it has provided certain required medical support services including use of the NMSN in at least 75 percent of the cases reviewed as required in § 303.32.

Under § 308.2(e)(1), a State must determine whether the State is meeting its obligation to include medical support that is reasonable and accessible, in accordance with § 303.31(b), in at least 75 percent of new or modified support orders. Under § 308.2(e)(2), States are required to assess their own performance according to their criteria, whether the NMSN was used to enforce the order in accordance with the requirements in § 303.32, if reasonable and accessible health insurance was available and required in the order, but not obtained.

Proposed § 308.2(e)(3), which in the proposed rule required a State to determine whether the State Medicaid agency was informed that coverage had been obtained, was deleted in response to comments. Proposed paragraph (e)(4) (renumbered § 308.2(e)(3) in the final rule), is revised in response to comments, to read as follows. A State must ''determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § 303.32 of this chapter, where appropriate, to a new employer when a noncustodial parent, or under State option a custodial parent, was ordered to provide health insurance coverage and changed employment.'' The reference to custodial parents was added in response to comments received.

Response to Comments

We received 36 letters from States, Tribes, advocacy groups, and other interested individuals. This section of the preamble describes the specific

aspects of the final regulations and identifies changes made to proposed rules. We received many thoughtful comments requesting clarification of aspects of medical support case processing that are not addressed in the Federal regulations, or asking for more specificity in requirements when the regulations allowed for State flexibility or did not agree with positions proposed in the regulation because the commenter's State had already implemented a policy, in the absence of Federal regulations, that was inconsistent with some of the proposed requirements. Since the Working Group's report was sent to Congress in 2000, many States have already moved forward to establish medical support services and approaches based on their recommendations in the absence of proposed Federal regulations in this area.

On the whole, comments were positive and welcomed the proposed update of medical support regulations, particularly with respect to the definition of reasonable cost and the authority to close cases in which an individual in a Medicaid only, child-only case is not cooperating with the IV–D agency. We also made a number of changes to the proposed regulations to accommodate practices already in place in States that are leaders in seeking medical support for children. For instance, we eliminated a proposed specific order of allocation satisfaction of child support and medical support which employers would have been required to follow. To impose a requirement now, when States have moved forward without Federal guidance or mandate, would be unfair to those States and contrary to our commitment to State flexibility. On the other hand, we did not agree with comments to expand States' authority to close Medicaid-only, child-only cases to include authority to close any Medicaid-only case, because the authority would be too broad and inappropriate when assignment and cooperation with the IV–D agency is required in such cases.

We believe States that have not taken the lead in medical support activities in the IV–D program can learn from the innovative approaches implemented in States that have already developed robust medical support programs. Therefore, changes to the regulations were not significant but rather technical in nature and consistent with our commitment to a longstanding partnership with State Child Support Enforcement programs.

Section 302.56—Guidelines for Setting Child Support Awards

1. *Comment:* An income shares child support guidelines schedule incorporates some medical costs within the guideline schedule itself (e.g., $250 per year per child) and medical costs are considered as part of the basic child support obligation amount that is ordered to be paid by the obligated parent. Additionally, the costs of health insurance and/or medical costs not covered by insurance are apportioned between the parents based on the percentages of their respective shares of their combined net income. Since future out-of-pocket medical costs for each child are unknown and undeterminable at the time an order is being established or modified, it is virtually impossible for the courts to include a specific monthly dollar amount for cash medical support in support orders. Does this approach in a State's guidelines meet the cash medical support requirements in the proposed regulation?

Response: Yes. As indicated in the preamble to the proposed rule, § 302.56(c) is purposely broad, ensuring that child support guidelines consider not only health insurance coverage that may be available from either, or both parents, but also how the parents will meet the child's health care needs when no insurance is available, when the cost of insurance is beyond the reasonable means of the parents, or where the cost is extraordinary or unreimbursed by insurance. The regulation does not mandate that State guidelines label the payment of medical costs as a stand-alone item. However, it is possible that both health insurance coverage and cash medical support would be included in a support order. For example, where a custodial parent has access to health insurance coverage for the parties' child, the noncustodial parent may be required to pay a share of the premium's cost. Also, each parent may be ordered to pay a fixed sum or a percentage of the cost of treatments such as allergy shots, orthodontic work and/or psychological counseling, not covered by insurance.

2. *Comment:* If the final rule eliminates the words ''other means'' for providing for the child(ren)'s health care needs beyond health care coverage and cash medical support, it is unclear how alternative health care coverage such as the Defense Enrollment Eligibility Reporting System (DEERS) enrollment provided for dependents of military service members or Department of Defense employees or how Indian Health Services (IHS) coverage would fulfill the requirement of the IV–D agency to obtain a medical support order. Definitions of DEERS and IHS coverage outside Title 45 of the Code of Federal Regulations make it clear that these are not forms of ''insurance'', and they may not require the payment of a premium or cash medical support contribution by either parent.

Response: We believe that the definition of health insurance in § 303.31(a)(2) is broad enough to encompass both DEERS and IHS coverage because it includes ''other types of coverage * * * under which medical services could be provided to the dependent child(ren).''

3. *Comment:* The proposed regulation requires that State child support guidelines ''address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31(b) of this chapter.'' Proposed § 303.31(b) places various medical support related duties on the IV–D agency, such as petitioning to establish and modify medical support orders. It also refers to accessibility of coverage ''as defined by the State,'' and to ordering cash medical support in addition to health insurance coverage ''in appropriate cases, as defined by the State.'' The commenter reads the proposed regulation as recognizing that medical support will inevitably be a guidelines issue but, since medical support affects the amount of support obligations, the regulation still provides States with the flexibility to define certain medical support standards by statute, regulation, or other appropriate means outside the guidelines, as the State determines. The commenter requests that OCSE confirm this reading.

Response: We agree with this assessment of the regulations.

4. *Comment:* Several commenters found the proposed § 302.56(c) unclear because the cross-reference to § 303.31(b) (medical support requirements for IV–D cases) creates confusion about the scope of the change. The guidelines regulation (§ 302.56) currently applies to all orders issued in the State, whether in IV–D or non-IV–D cases. However, § 303.31(b) specifically says, ''The State IV–D agency must:'' If the reference to § 303.31(b) in § 302.56(c) means those requirements also apply in non-IV–D orders, we recommend the regulation not cross-reference § 303.31(b).

Response: While child support guidelines must be used in setting all support orders in the State, § 303.31(b) clearly only applies to IV–D cases by its reference to the IV–D agency. Therefore, the required IV–D activities in

§ 303.31(b) do not apply to non-IV–D cases.

5. *Comment:* The proposed rule asked for comments on whether the new requirements will require a change in a State's child support guidelines. This commenter indicated that it is likely guidelines will need to be revised because the new requirement is an addition to existing minimum requirements for guidelines in § 302.56. However, the commenter indicates that it is likely that amending the guidelines cannot be accomplished before the rule becomes final because a State will have to seek legislative authority in early 2007 in an attempt to comply, with the understanding that additional changes may be needed once the final rule is published. The commenter asks for confirmation of this assumption.

Response: States should plan to implement the medical support provisions of the DRA of 2005 in accordance with the statutory language by the appropriate effective date that applies to each State.

6. *Comment:* A person with available insurance coverage can also be a recipient of a state-funded medical insurance program, a form of public assistance. Generally, courts are unwilling to order that person to carry coverage and/or to enforce an order requiring them to carry coverage.

Response: Section 303.31(b) requires the IV–D agency to petition for health insurance coverage that is accessible and available at reasonable cost. Section 303.31(a)(3) defines reasonable cost as a cost that does not exceed five percent of the obligated parent's gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations, or court rule having the effect of law or in State child support guidelines. We believe that these requirements allow States and courts flexibility to determine when it is appropriate to require an obligated person to carry health insurance.

7. *Comment:* One commenter indicated that in an obligor child support guidelines model, only income and resources of the noncustodial parent are gathered and considered. The commenter has concerns about how the income and resources of both parents can effectively be considered in such obligor-model guidelines. Proposed regulations which require States to look at the income and resources of both parents in determining medical support responsibility means a State with that model of guidelines would need to gather income and resource information from the custodial parent for this purpose alone. This will lead to the need for considerable legislative changes, policy changes, and automated system changes. It also will be a significant human resource issue. Further, the commenter stated that States should be afforded flexibility in determining which parent shall provide medical support because, while Federal law clearly requires the establishment of medical support against either or both parents, it does not specify how States are to apply this provision and Federal law does not address reasonable cost.

Response: We believe that the Federal statute clearly takes into consideration the availability of health insurance to the custodial, as well as the noncustodial parent, at reasonable cost. These requirements will ensure that parents share primary responsibility for their children's health care needs, when appropriate. State child support guidelines must, at a minimum, ''provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31'' [45 CFR 302.56(c)(3)]. The mechanism for accomplishing this mandate is determined by each State.

8. *Comment:* One commenter described a State guidelines statute as requiring allocation of responsibility for unreimbursed medical expenses between the parties based on each individual's respective proportion of combined income. The commenter requested clarification as to whether a specified amount must be ordered to be considered cash medical support. If so, the commenter believes that the term ''* * * medical costs not covered by insurance * * *'' is somewhat confusing as it cannot be addressed in an order until the amount of uncovered costs is identified.

Response: Section 303.31(a)(1) defines cash medical support as ''an amount ordered to be paid * * * for other medical costs not covered by insurance.'' An order that includes an allocation between the parents for responsibility for unreimbursed medical expenses based on each individual's respective proportion of combined income would meet this requirement.

9. *Comment:* One commenter was concerned that the proposed amendment to § 302.56(c) does not require any specific language be included in these medical support orders, leaving each State with a great deal of freedom on how to comply with this amendment. The proposed amendment adds an additional requirement that orders States to ''address how the parents will provide for'' the children's health care needs. However, the inclusion of these words alone provides little guidance to States beyond what the current guidelines suggest. The Working Group recognized the importance of providing structured and equitable guidance. In their report, the Working Group proposed a ''decision matrix'' to provide guidance to decision-makers in deciding which health care coverage to order. Additional requirements, even beyond the recommendations in the Working Group report, are needed so that States can draft their respective guidelines efficiently. Requiring specific provisions in each support order will allow the agencies to focus on enforcement rather than interpreting these regulations.

Response: We agree that the Working Group Report is a rich source of information for States in determining how best to proceed, given the flexibility allowed under these regulations. The Working Group Report may be found at: *http://www.acf.hhs.gov/programs/cse/pubs/2000/reports/medrpt.* However, we support State flexibility, within a context of broader Federal requirements, to determine the details of how best to proceed, and are confident States will implement the requirements in a way that protects children and families.

Section 303.11—Case Closure Criteria

1. *Comment:* A number of commenters supported the language in the proposed rule in § 303.31(b)(11) because the reference to § 302.33(a)(1) would allow closure of any Medicaid-only case, not just the ''child-only'' Medicaid cases, upon noncooperation of the custodian. These commenters favor a broad interpretation under which any non-TANF Medicaid cases may be closed for noncooperation of the custodian because it allows more flexibility for States to focus on providing services for custodial parents who want such services.

Other commenters believed the proposed change to § 303.11(b)(11) was too broad because assignment of support rights and cooperation with the IV–D agency is a condition of eligibility for individuals who are included with children in a Medicaid case, unless the adult recipient falls within certain statutory exemptions addressed in DCL–00–122. DCL–00–122 explains the Federal Medicaid assignment and cooperation requirements and exemptions, options pertaining to paternity and medical support and describes the child support enforcement services available to families receiving Medicaid. Since the regulation must be consistent with Federal statute, these commenters request that closure for noncooperation of the custodian be limited to non-TANF child-only

Medicaid cases only if the custodian is not required to assign his or her rights to medical support and cooperate with the IV–D agency pursuant to section 1912 of the Act (42 U.S.C. 1396k.)

Response: We agree with commenters that suggested the proposed revision to § 303.11(b)(11) was overly broad. The change was proposed because former § 303.11(b)(11) did not allow case closure for noncooperation in non-IV–A Medicaid cases and States indicated that there are custodial parents of children in child-only Medicaid cases who refuse to cooperate with the IV–D agency. However, in non-TANF Medicaid cases in which both the custodian and child(ren) are receiving Medicaid, all recipients must assign rights to medical support and cooperate with the IV–D agency as a condition of receipt of Medicaid. As stated in the letter to all Medicaid Directors shared with IV–D Directors in DCL–00–122:

''If parents or other adults apply for Medicaid on behalf of themselves and their children, they must assign medical support and payment rights to the State and cooperate in establishing paternity, obtaining medical support and payments, and providing information about liable third parties as a condition of their own eligibility, unless they are exempt. Pregnant women eligible under Section 1902(l)(1)(A) of the Act (poverty level pregnant women) are exempt from the requirements to cooperate in establishing paternity of a child born out of wedlock, and in obtaining medical support and payments for themselves and the child born out of wedlock. (These women must, however, assign the rights to medical support and payments.) In addition, individuals with good cause, as described by Federal regulation 42 CFR 433.147(c), are exempt from cooperating in establishing paternity, obtaining medical support and payment, and pursuing third party liability. Applicants must be effectively informed of these exemptions and told that the decision whether or not to cooperate will not affect their child's eligibility for Medicaid.'' § 303.11(b)(11) must be revised as follows: (b) In order to be eligible for closure, the case must meet at least one of the following criteria * * * (11) In a non-IV–A case receiving services under § 302.33(a)(1)(i) or (iii), or under § 302.33(a)(1)(ii) when cooperation with the IV–D agency is not required of the recipient of services, the IV–D agency documents the circumstances of the recipient of services' noncooperation and an action by the recipient of services is essential for the next step in providing IV–D services.

2. *Comment:* Another commenter would support the approach of allowing States to close any Medicaid-only case in which the custodial parent is not cooperating. For example, States may close a case involving the following situation: A Medicaid-only case is referred to the State with a custodial parent and child receiving Medicaid. The custodial parent subsequently fails to cooperate, and Medicaid sanctions are put in place that result in only the child receiving Medicaid. The commenter wants to be able to close this case and is not clear as to whether this type of case would be considered a ''child-only Medicaid-only'' case.

Response: Once the custodial parent is denied receipt of Medicaid, the case would be considered a ''child-only, Medicaid-only'' case and could be closed under § 303.11(a)(11) because of the documented noncoopertion and sanction.

3. *Comment:* It has been one commenter's experience that when a custodial parent is receiving Medicaid services/benefits and does not cooperate with the IV–D program, the IV–D program is forced to bring the custodial parent before the court. Once before a judge the custodial parent has clearly stated that he/she has no interest in obtaining child support from the noncustodial parent and the judges have ruled in the custodial parent's favor, thus causing the IV–D program to expend time and money without a positive result for the child(ren).

Response: If the custodial parent is not cooperating with the IV–D agency as required, the IV–D agency should notify the Medicaid agency and have them take steps to sanction the custodial parent accordingly. Threatened loss of Medicaid benefits may then encourage the custodial parent to cooperate. If he or she does not cooperate, the IV–D agency could choose to close the case under § 303.11(b)(11).

4. *Comment:* One commenter stated that, if OCSE will permit States to close child-only, Medicaid-only cases for noncooperation of a custodian, States should also be allowed to close cases on the request of the custodial person pursuant to § 303.11(b)(8). If § 303.11(b)(8) is not amended, the IV–D agency would be compelled to deny a *request* for IV–D case closure from a custodian in a non-TANF Medicaid case. However, if the custodian subsequently *fails to cooperate* because of the custodian's lack of interest in IV–D assistance, the IV–D case closure requested by the custodian would eventually result. The delay in accomplishing case closure would be inefficient.

Response: An amendment to § 303.11(b)(8) is inappropriate. Although the parent is not required to assign the child's rights to medical support, section 1902(a)(25)(H) of the Act requires States to have laws which automatically assign an individual's rights to payment for medical care by third parties, to the extent that Medicaid has made a payment. These laws assign to States an individual's, (e.g. , a child's) rights whether or not an assignment was executed. When only the child is applying for Medicaid, under section 1902(a)(25)(A) the State must ask the parent whether the child has health insurance in order to identify legally-liable third party resources. Because there is an assignment of the child's rights to medical support as a condition of the child's receipt of Medicaid, a IV–D agency may not close the case at the request of the custodial parent or caretaker in such cases.

5. *Comment:* A commenter indicated that the IV–D agency receives child-only Medicaid-only referrals, but the Medicaid agency has not imposed an assignment or cooperation responsibility in those cases. Child support services, thus, have the appearance of a choice offered to the family; they can continue the services or not. Given that scenario, rather than documenting noncooperation, is it possible to send child-only cases a ''continuation of services'' letter to determine whether or not the family wants services to continue?

Response: Although the parent is not required to assign the child's rights in a child-only Medicaid case, section 1902(a)(25)(H) of the Act requires States to have laws which automatically assign an individual's rights to payment for medical care by third parties to the extent that Medicaid has made a payment. These laws assign to States an individual's rights whether or not an assignment was executed and if the case is referred to the IV–D agency, it is the IV–D agency's responsibility to seek medical support for that child. Therefore, it would be inappropriate to treat these cases like former TANF cases in which, in accordance with § 302.33(a)(4), States send a notice to the custodial parent indicating that IV–D services will be provided unless the agency is notified by the custodial parent to close the case.

6. *Comment:* Two commenters indicated that case processing would be facilitated if § 303.11(b)(10) was expanded to include child-only Medicaid cases. This would allow States to close child-only Medicaid cases in the same manner allowed for applications and former assistance cases

when the IV–D agency is unable to contact the custodial parent within a 60 calendar day period despite an attempt of at least one letter sent by first class mail to the last known address. One commenter suggested that we amend § 303.11(b)(10) to read as follows: ''In a non-IV–A case receiving services under § 302.33(a)(1)(i) or (iii), or under § 302.33(a)(1)(ii) when cooperation with the IV–D agency is not required of the recipient of services, the IV–D agency is unable to contact the recipient of services within a 60 calendar day period despite an attempt of at least one letter sent by first class mail to the last known address.''

Response: We agree with these commenters and have included the change to § 303.11(b)(10) as requested above. The IV–D agency would be required to meet the requirements of § 303.11(c) by sending the recipient of services or initiating a notice of the State's intent to close the case in writing 60 calendar days prior to closure of the case. The case should not be closed if contact is reestablished with the recipient of services within the 60 day timeframe.

7. *Comment:* One commenter requested clarification with regard to custodial or caretaker noncooperation with medical support requirements in any IV–D case including active IV–A or IV–E foster care cases or non-IV–A cases. The commenter's State has taken the position thus far that noncooperation with medical support would not extend to closing an active IV–A or IV–E case or non-IV–A case.

Response: Custodial or caretaker noncooperation with the IV–D agency in medical support requirements in a IV–D case, that is also an active IV–A, IV–E, or non-IV–A Medicaid-only case, would not authorize closure under § 303.11(b)(10) or (11).

8. *Comment:* One commenter was concerned that the proposed amendment to § 303.11(b)(11) seems to contradict the policy behind the regulation, to secure medical coverage for children. Instead of promoting the best interests of children, the closure of the case would leave the custodial parent and child without assistance in obtaining and enforcing child support orders. Moreover, the child support and health care coverage enforced by the IV–D agency ultimately benefits the child rather than the custodial parent. Therefore, it is the child who stands to lose additional protections because of his or her parent's actions.

Response: Case closure is optional for IV–D agencies and is allowed only under a limited set of specific circumstances in which there is little chance of success. In addition, statutory limitations with respect to mandated cooperation of parents and other custodians often remove the primary source of critical information (the custodian) needed by IV–D agencies.

9. *Comment:* With regard to case closure for child-only Medicaid cases, is noncooperation with medical support services a basis for case closure in a non-IV–A case where the recipient of services has otherwise cooperated?

Response: The final regulation clarifies that case closure under paragraph (b)(11), is only authorized (although not required) if the recipient of services is not required to cooperate with the IV–D agency as a condition of receiving Medicaid services.

Section 303.31—Securing and Enforcing Medical Support Obligations

Section 303.31(a): Explanation of Terms Used in § 303.31

(1) Cash Medical Support

Comment: A commenter suggests that the term ''cash medical support'' be clarified, so that public coverage cases can be recognized, and that States be allowed to determine methods of reimbursement that align with each State's available programs.

Response: We believe the current language in § 303.31(a)(1), which defines cash medical support, does recognize public health coverage, such as Medicaid, State Child Health Insurance Program (SCHIP), the Indian Health Service, and Defense Enrollment Eligibility Reporting System. ''Cash medical support'' is defined as ''an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.'' This would include the cost of premiums or co-payments required in the SCHIP or Medicaid program, for example. In addition, the regulation, while defining what can be considered as cash medical support, leaves States discretion to determine methods of reimbursement that align with each State's available programs.

2. *Comment:* One commenter requested that we add two definitions to § 303.31(a) to read: ''(4) Poverty line has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

''(5) A child is considered eligible for medical assistance under the State Plan under title XIX of the Social Security Act (Act) or for child health assistance under the State Plan under title XXI of the Act if the child's family income is below the income standard of the applicable State Plan in the State in which the child resides, regardless of whether the child has applied for or is enrolled in the program under either State Plan.''

Response: We believe these decisions and definitions are best left to States unless specified under Federal statutes applicable to State IV–D programs.

3. *Comment:* One commenter indicated that, based on experience working with Medicaid and SCHIP agency program staff and having discussions regarding distributing cash medical support to those agencies, it is evident that those agencies need Federal guidance on accepting cash medical support from the child support agency and reconciling those amounts. Therefore, it is their recommendation that collaboration between child support and public health insurance entities take place on a Federal level. This concern was shared by many commenters concerned in particular that Medicaid agencies may refuse to accept assigned cash medical support from the IV–D agency.

Response: HHS has sponsored two sets of collaboration meetings over the past two years that brought together State program directors and staff from the IV–D, IV–E foster care, Medicaid, and SCHIP programs. States raised issues they face in securing health care for children and discussed possible solutions that would be needed to resolve them, through collaboration, regulations, or statutory change. A report on the 2005 meetings is at: *http://www.acf.hhs.gov/programs/cse/pol/DCL/2006/dcl-06–09.*

Some State IV–D agencies reported that State Medicaid agencies would not accept assigned cash medical support collections because they had no authority to do so. In discussing this issue with Federal Center for Medicare and Medicaid Services (CMS) participants, we learned that, for States that operate Medicaid programs as fee-for-service programs, there is no authority to accept assigned medical support unless the child to whom the medical support is owed has actually received Medicaid services and the Medicaid agency has paid the provider a fee for such services. In other words, without having expended funds on the health care of the particular child, the Medicaid agency has no authority to keep the assigned cash medical support. Of course, if fees for services have been paid, assigned medical support may be retained to reimburse the Medicaid program. While directly addressing this issue would require a change to the Federal Medicaid statute, this problem

will diminish over time as more States move to a managed-care approach, which eliminates the problem incurred in fee-for-service programs and allows Medicaid agencies to retain assigned cash medical support to reimburse the program for the cost per child for health care under a managed care system. We are aware of those concerns and continue to work with our Federal partners to address these issues.

4. *Comment:* A commenter asked if proposed § 303.31(a)(1) that states, in relevant part, that ''Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity'' is intended to address costs associated with ''managed care'' Medicaid coverage only, or costs associated with ''fee for service'' Medicaid coverage as well? The preamble states this would include the cost of premiums when health insurance is provided through Medicaid or SCHIP.

Response: As explained in the response to the previous question, there is a Federal statutory impediment under the Medicaid program (title XIX of the Act) that prevents States using ''fee-for-service'' type Medicaid coverage from retaining assigned cash medical support collections if services have not been provided to the child(ren). The Medicaid agency has no authority to keep the assigned cash medical support.

5. *Comment:* A commenter asked for clarification as to what is meant by the use of the term ''another parent'' in § 303.31(a)(1), which defines ''cash medical support'' to include an amount ordered to be paid toward the cost of health insurance provided by a public entity *or by another parent* [emphasis added] through employment or otherwise, or for other medical costs not covered by insurance.'' It is not clear what is meant by the term ''another parent.''

Response: The term refers to a parent providing health insurance who is not the parent obligated to pay cash medical support.

6. *Comment:* A commenter was concerned that including the phrase ''or for other medical costs not covered by insurance'' in the definition of ''cash medical support'' could mean the IV–D agency would be responsible for recovering ongoing medical bills. However, the commenter indicated that it would be a huge concern and administrative burden if the local agencies would now be required to track the payment of unreimbursed medical bills and then develop cash orders to pay them.

Response: State IV–D agencies are not responsible for determining the amount of unreimbursed or uncovered medical expenses if the support order only addresses how such unquantified expenses are to be shared by parents. However, we have a longstanding policy that IV–D agencies would be responsible for enforcing an obligated parent's responsibility, under the support order, to pay for a portion or all of a medical expense if the custodial parent presents bills (i.e. for orthodontia), to the IV–D agency. See the first comment and response on § 302.50, Support Obligations, in the final rule on ''Extension of IV–D Child Support Enforcement Services to Non-AFDC Medicaid Recipients and to Former AFDC, Medicaid and Title IV–E Foster Care Recipients,'' AT–91–01: *Section 302.50—Support obligations* as follows:

Comment: One commenter requested clarification of whether the restriction in § 302.50(e), that no child support collected may be used to satisfy a medical support obligation unless the support order designates a specific dollar amount for medical purposes, includes one-time lump sum amounts (i.e. , medical support judgments) or only monthly payments ordered in lieu of paying health insurance premiums.

Response: If the support order designates a specific dollar amount for medical purposes, whether it is expressed in monthly increments (e.g., $50.00 per month) or as a lump sum amount (e.g., $1,500.00 to pay for birth expenses), the IV–D agency must collect the medical support. If the support order does not designate a specific dollar amount for medical purposes (e.g., absent parent is ordered to pay for child's orthodontia), enforcement of that aspect of the order is not a required IV–D function. We encourage States to develop procedures to determine when judgments for medical expenses for which the absent parent is responsible under the order should be pursued and to pursue such judgments when appropriate. Federal matching funds are available for these activities.

7. *Comment:* A commenter asked that States not be required to address payment of unanticipated medical costs or costs not reimbursable by insurance.

Response: States have discretion within the definition of ''cash medical support'' in § 303.31(a)(1) to determine what medical costs obligated parents are ordered to pay.

8. *Comment:* A number of commenters were concerned that the definition of cash medical support requires that medical support provisions must be a fixed amount ordered to be paid for health insurance or ''other medical costs not covered by insurance'' because the ordering of health insurance premiums or other medical costs not covered by the insurance could be an ''either/or'' proposition. For example, the proposed regulation provides that ''[in] appropriate cases cash medical support may be ordered in additional to health insurance coverage.'' According to the commenter, many State child support guidelines include a provision to order the payment of future reasonable health care costs not covered by insurance which cannot be determined at the time of the hearing and may exist whether or not health care coverage is in place.

Response: Section 303.31(a)(1) allows cash medical support to be ordered, regardless of whether or not health insurance coverage is provided. It is up to each State to determine whether or not it is advisable to estimate a specific amount for cash medical support in the form of shared responsibility for medical costs not covered by insurance or, in the absence of health insurance, to set in the order a specific amount for cash medical support. For example: A medical support order could require that the custodial parent enroll in private health insurance, the noncustodial parent contribute to the cost of the health insurance premium (e.g., $50 a month), and the parents proportionately share the cost of reasonable health care expenses not covered by insurance.

9. *Comment:* Many commenters were concerned that the responsibility for unreimbursed and unspecified future medical costs should not be included in the calculation of whether medical support is reasonable in cost to the obligated parent. Some commenters recommended clarifying the definition of cash medical support to ensure that the unreimbursed medical costs not covered by insurance (and that generally cannot be fixed at the time of the hearing) are excluded from the definition of cash medical support subject to the five percent cost-reasonableness standard. In addition, a number of commenters stated that including these unfixed, unreimbursed medical expenses in the definition of cash medical support subject to the reasonable cost limitations would unfairly place the burden for these costs on the custodial parent. And finally, a commenter asked whether, if future medical support expenses are not subject to the 5 percent cost-reasonableness standard, the cost in an order to pay a percentage of future uninsured medical expenses is always reasonable?

Response: We agree that it would not be appropriate at the time an order is established to include the cost of future, uncertain and, unspecified medical costs when applying the five percent cost-reasonableness standard (or at State option an allowable alternative

standard) under § 303.31(a)(3). However, we do not agree that responsibility for extraordinary medical costs set in a subsequent medical support order, should be ordered without any consideration of the obligated parent's ability to pay at the time the cost is incurred or reimbursement is sought.

The Federal statute at section 467 of the Act requires each State to have and use child support guidelines as a rebuttable presumption in setting child support awards in the State. Federal regulations at § 302.56(c)(1) require State guidelines to take into consideration all earnings and income of the noncustodial parent in determining the amount of the support order. A child or medical support order may deviate from the amount the guidelines would otherwise require if there is a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by criteria established by the State and taking into considering the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Therefore, a State may, on a case-by-case basis, deviate from its guidelines in setting responsibility for extraordinary, uncovered medical costs incurred if the requirements of § 302.56(f) and (g) are met.

10. *Comment:* One commenter indicated that the State's guidelines give a credit to the parent providing the private health insurance which is deducted from the child support amount calculated under the formula. Under these guidelines, a parent who provides private health insurance for a child receives a credit of 50 percent of the cost of the insurance from the other party. When the obligor provides the coverage, the child support order is reduced by the amount of the credit. When the obligee provides the coverage, the child support order is increased by the amount of the credit. These amounts are not captured as a stand-alone amount. While the credit appears as a line item on the worksheets used to calculate the guidelines, this amount is not identified as a separate medical support item in actual orders. Is this acceptable?

Response: We believe that this approach to medical support is acceptable because the definition of cash medical support is an amount ordered to be paid toward the cost of health insurance. The order generated by these guidelines does not include a sum certain in the order language itself, but the guidelines worksheet would provide documentation and clearly indicate that medical support was ordered.

11. *Comment:* A commenter described the situation in which a noncustodial parent is ordered to pay an amount that the IV–D agency sends to the Medicaid agency. The commenter urged that this approach needs to be implemented carefully to avoid conflict with existing rules for cost-sharing in public insurance programs. Both Medicaid and SCHIP regulations authorize cost-sharing based on different standards. For both programs, these standards are applied to the custodial parent's household, not to the combined income of both parents. Therefore, in States where these costs are assessed, the custodial parent is in effect contributing cash medical support to the public entity, which may or may not be considered in ordering cash medical support against the noncustodial parent.

Response: If a family is receiving SCHIP or Medicaid services, that fact should be explored at the time an order is entered and taken into consideration when establishing the cash medical support obligation. Whether or not a custodial parent is contributing toward the cost of Medicaid services, if there is an assignment of support rights in effect, the State has the authority to retain assigned cash medical support to reimburse the cost of medical services provided to the family. In SCHIP programs, where there is no Federal requirement for an assignment of rights to medical support as a condition of receipt of SCHIP, the receipt of SCHIP and the custodial parent's contribution to SCHIP should be raised at the time the order is being set to ensure appropriate distribution of any cash medical support the noncustodial parent is required to pay. For example, if a custodial parent is required to contribute to the cost of SCHIP, the support order could require that a noncustodial parent's cash medical support payments be forwarded to the custodial parent to contribute to, or cover, the cost of the SCHIP contribution.

12. *Comment:* A commenter asked whether cash medical support arrears can be recorded on the OCSE 157 report.

Response: Yes, cash medical support arrearages should be reported with other child support arrearages on the OCSE 157.

13. *Comment:* A commenter indicated the preamble of the proposed rule states that ''the custodial parent could enroll the child(ren) [in private coverage] and the State could order the noncustodial parent to pay cash medical support towards the cost of the employee's share of health insurance coverage by the custodial parent. It would be up to the State to determine how the premium is paid, directly by the noncustodial parent to the plan administrator or as reimbursement to the custodial parent should he or she have premiums withheld from his or her income.'' The commenter suggested that it is not workable for States to allow the noncustodial parent to make the cash payment directly to the plan administrator. States will not be able to effectively monitor and enforce such payments.

Response: We agree with the commenter that the noncustodial parent paying a cash premium amount directly to the plan administrator is inappropriate. All cash medical support payments must be sent to the State Disbursement Unit for distribution. However, if the obligated parent is providing private health insurance available through his or her employer, the employer must withhold any obligation of the employee for employee contributions necessary for coverage of the children and send any amount withhold directly to the plan, as required in § 303.32(c)(4).

14. *Comment:* Two commenters wanted confirmation that unpaid cash medical support may be enforced with the same remedies as unpaid child support, such as Federal and State tax refund intercepts, credit bureau reporting, passport denial, seizure of personal and real property, and the like.

Response: That is correct.

15. *Comment:* The proposed rule uses as an example that if a custodial parent of a child enrolled in Medicaid is required to pay co-pays or premiums, the cash medical support obligation could be used to reimburse the parent for the co-pay or premium. Under existing Federal rules, if a parent is on Medicaid, any medical support is assigned to the State to reimburse the State for what it is paying to vendors. Is this the proposed change?

Response: This regulation does not change the requirements for assignment to the State under 42 CFR 433.154 or distribution of assigned medical support under 45 CFR 302.51(c). Therefore, it may be more appropriate for a medical support order to direct the noncustodial parent to reimburse the custodial parent for any premiums or co-payments for SCHIP rather than Medicaid coverage.

16. *Comment:* A commenter asked what happens when a custodial parent's medical support obligation exceeds the

child support obligation he or she is supposed to be receiving?

Response: It is up to the State to decide how to proceed in such a situation either in accordance with State law and child support guidelines, or on a case-by-case basis by rebutting the presumption under State law and guidelines of the support order amounts.

17. *Comment:* If the State adopts the five percent test for determining whether health insurance coverage is available at reasonable cost, does the State then have to apply the same definition of reasonable cost to cash medical support? To allow the States flexibility in this area is important because of the interplay between the State's child support guidelines (cash child support) and medical support orders as well as the wide range of medical support orders that are issued in the absence of required health insurance coverage, and the unpredictability of children's future medical expenses that are not covered by private health insurance.

Response: A State may establish a reasonable alternative income-based numeric standard that includes a five percent standard of cost reasonableness for private health insurance and a different definition of cost reasonableness for cash medical support.

(2) Health Insurance

1. *Comment:* In § 303.31(a)(2), health insurance is defined as HMO, PPO, or ''other type under which medical services can be provided.'' Would vision, dental, or prescription only policies be included in the definition of ''other type under which medical services can be provided'' and count as medical support provided for purposes of the OCSE–157 report?

Response: Yes.

2. *Comment:* Some employers have self-insured (i.e., self-funded) health care plans that pay the health care claims of their employees, rather than purchasing health insurance from an insurance company. These may not be considered ''insurance plans'' in the traditional sense. For this reason, the commenter asked if the definition of ''health insurance'' found in § 303.31(a)(2) should specifically address these plans to remove any doubt that they are included in the definition.

Response: We believe the language in § 303.31(a)(2), ''other types of coverage which is available to either parent, under which medical services could be provided to the dependent child(ren),'' covers this type of plan.

3. *Comment:* Does the definition of health insurance requiring that the IV–D agency look to either parent for available coverage, mean the IV–D agency may not proceed with an establishment until it has located and joined both parents to the establishment proceeding? Often children live with a nonparent relative. In this circumstance, may the State seek a support order against only one parent? We recommend even if the IV–D agency has cases to seek support against both parents, the agency have the flexibility to proceed against one parent at a time, if that is what is most expedient.

Response: If the custodial caretaker is not a parent of the child(ren) and the location of both parents is known, the State must determine whether private health insurance, that is reasonable in cost and accessible to the child(ren), is available to either parent. Should the State be unable to locate one of the parents, the State may proceed against the other parent.

(3) Cash Medical Support or Private Health Insurance That Is Considered Reasonable in Cost

1. *Comment:* A number of commenters asked for clarification with respect to § 303.31(a)(3) as to which parent's income is subject to the five percent affordability standard. The proposed language indicates that the income of the ''obligated parent'' is compared to the five percent standard. However, it is unclear whether that is the parent obligated to provide coverage, or the parent obligated to contribute toward that coverage, or both. In addition, it is unclear whether the proposed regulation applies the five percent standard to the premium cost, or whether it applies to each parent's proportional share of the premium cost. If the five percent is compared to the premium cost paid by the parent providing insurance before reimbursement from the other parent, many health care plans will be deemed not affordable.

Response: We believe that § 303.31(a)(3), as written, is clear that States must determine to whose income (the custodial or noncustodial parent or both) the five percent standard applies. A State would compute the five percent standard based on the income of the parent being ordered to secure, or pay for private health insurance coverage. The five percent reasonableness standard would be applied to the parent who is ordered to pay cash medical support for the premium of health insurance, whether it is provided by the obligated parent or another parent. If both parents are ordered to contribute to the cost of the premium, then the individual cost could not be more than five percent of each parent's income (or the alternative standard adopted by the State). Similarly, if a noncustodial parent is ordered to pay $50 a month to reimburse the custodial parent for out-of-pocket medical costs not covered by insurance, the five percent reasonableness standard would be applied to the obligated parent's income. Therefore, since the facts of a particular case would vary from case to case, a State would need to determine at the time the order is entered to whose income the five percent standard is applied. States should establish guidelines for applying the five percent standard as appropriate.

2. *Comment:* A commenter indicated that proposed § 303.31(a)(3) uses the term ''gross income,'' but does not define ''gross income.'' In this commenter's State, ''gross income'' is a term of art in the new child support guidelines, meaning income received from wages and salaries, but also including income such as spousal maintenance received, and excluding income such as spousal maintenance or child support ordered. The commenter recommended that the language should be clarified to define gross income, or provide the appropriate cross-reference if the term is already defined for child support purposes.

Response: Neither title IV–D of the Act nor Federal IV–D regulations define ''gross income.'' That definition of ''gross income'' is currently left to the States and we believe it is appropriate that States define the term for internal consistency with other possible uses of the term in the State.

3. *Comment:* A commenter indicated that § 303.31(a)(3) is unclear as to the impact of insurance not being ''reasonable'' in cost and assumes that the result would be that the insurance would no longer be considered by the court. Again, if that is the result, then the regulation needs to be clearly drafted to avoid situations where parents remain on public coverage when private insurance is available.

Response: We believe that § 303.31(b)(2)–(4) provides rules for the required steps States must take if private health insurance is not available at the time the order is entered. For new or modified orders, under § 303.31(b)(2), a State must petition to include cash medical support. For existing orders not currently subject to review, a State must use the criteria established in § 303.31(b)(3) to identify orders that do not address the health care needs of children but for which there is evidence that health insurance may be available

or facts which are sufficient to warrant modification of the existing support order to address the health care needs of children. Under paragraph (b)(4), States are required to petition to modify those support orders that meet the conditions in the State's criteria.

4. *Comment:* One commenter praised the income-based standard of cost reasonableness for health insurance because it will benefit the agencies responsible for enforcing these regulations. Instead of making inquiries regarding the availability of employer-sponsored insurance for each individual case, the agency personnel would have a clear standard to apply. However, the commenter stated that some exception is needed to the minimum requirement for families with incomes below 150 percent of the Federal poverty level. Where families fall below 150 percent of the Federal poverty level, the commenter believes that it is necessary that the Government assist them by providing health coverage so that their resources can be used elsewhere. This exception should also be uniform in every State, with the same income requirement enforced in each State.

Response: Under § 303.31(a)(3), cash medical support or private health insurance is considered reasonable in cost if the cost to the obligated parent does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulation, or court rule having the effect of law or in child support guidelines. This language allows States the option of adopting an alternate standard, that is reasonable, income-based, and numeric. Using this option, States would have flexibility to adopt an exception to the minimum requirement for families with incomes below 150 percent (or some other percentage) of the Federal poverty level. Some States, for example New Jersey and Minnesota, already have variations of such an approach in State law and/or child support guidelines. We support State flexibility to make decisions that are appropriate for families and children within each State.

5. *Comment:* A number of comments requested clarification of whether, in the event that the obligor has health insurance available but has not previously opted to enroll in the coverage, the ''reasonable cost'' determination is to be applied to the difference between the cost of coverage for the employee only and coverage for the child(ren) in the IV–D case or whether it would also apply to the cost of enrolling the obligor, if the employee must be enrolled to obtain dependent coverage. Others asked whether the cost is only the difference in cost to the obligated parent between single coverage and family coverage or whether it means a *pro rata* amount of premium for the child, taking into consideration all other dependents covered by that family coverage premium.

Commenters explained that this issue arises because, in most employment-based coverage, the employee must enroll in order to cover his/her dependents. Thus, if an employee has not enrolled, he/she will have to do so in order to obtain ordered coverage for the children. Since there may be a substantial difference between the cost for an individual and the cost for covering the individual plus dependents, this could be an issue. This commenter urged that there be a uniform standard and that this decision not be left up to the States because similarly situated parents should be treated similarly. Only then will they perceive that the system treats them fairly.

Other commenters stated that the regulation should specify that the five percent limit applies to the total cost of coverage, not just the child's coverage for the following reasons. Many low income workers forgo coverage for themselves, because of the cost. Coverage for a dependent is typically an additional increment. Requiring coverage where the increment for the dependent is five percent of gross income, but the coverage for the obligor/ee is an additional amount, will significantly burden low income parents and erode the income available for contribution toward child support. Most commenters, however, favored excluding the cost of the coverage for the obligor for the purpose of applying the ''reasonable cost'' test because including the overall cost might preclude ordering coverage when the combined cost exceeds the cost-reasonableness standard.

Response: We appreciate the wide range of comments and specified concerns with respect to application of the five percent or alternative State standard. We believe it is appropriate to establish a unified approach to determining the cost-reasonableness of available private health insurance based on these comments and the consequences to parents and children of whether the five percent or alternative State standard is applied to the entire cost of insurance as opposed to the incremental cost of adding children to an insurance policy. Therefore, § 303.31(a)(3) has been revised to apply the standard to the incremental cost of all children or the difference between self-only or family coverage. The standard would NOT be applied to the cost of adding *each* child to the insurance plan but rather the cost of family vs. individual coverage. However, in accordance with § 302.56(f) and (g), States would still have the ability to rebut the presumption that the cost of available health insurance is reasonable by including a written or specific finding on the record for the award of child support stating that the guidelines amount would be unjust in a particular case.

We also agree with commenters that it is important to make it clear that there are very different financial consequences to parents and children, depending on which route results in health insurance coverage. If the reasonable cost standard were applied to the entire cost of a family plan for a parent ordered to provide available health insurance who had previously had not signed up for such insurance, we agree that the child in effect would be subsidizing the individual coverage for the responsible parent. In addition, we agree that the full cost of a family plan is more likely to exceed the reasonable cost standard, making it considerably less likely that the responsible parent will provide coverage through health insurance. As a result, cash medical support would become more prevalent. This may not be the best outcome for children, who may benefit more from health care coverage than from a cash contribution that is insufficient to permit the custodial parent to purchase coverage. Finally, we believe that to condition coverage on the entire cost of the insurance, rather than to the incremental cost, might encourage obligated parents not to seek individual coverage in hopes that the cost of family coverage would exceed the five percent or alternative State standard. However, as stated above, States retain the authority under § 302.56(f) and (g) to deviate from the determination that available health insurance is reasonable in cost, on a case-by-case basis.

6. *Comment:* A number of commenters asked the Office of Child Support Enforcement (OCSE) to clarify that the five percent reasonable cost test (or State alternative) is applied at the time the order is established, not at the time that the medical support is enforced by sending an employer a National Medical Support Order (NMSN). Commenters indicated that it would be difficult or impossible for IV–D agencies to monitor and track the five percent standard on an ongoing basis and take modification or enforcement action based on this criterion alone.

Response: We agree that IV–D agencies should not be required to revisit the application of the five percent standard every time the NMSN is sent. The five percent or alternative State standard must be applied at the time the order is established and when judgments for medical costs are sought, as discussed earlier. It is reasonable for a IV–D agency to enforce a medical support order by sending the NMSN without reevaluating the cost-reasonableness of the ordered health insurance. Should the cost or availability of health insurance change, the obligated parent would be expected to seek modification of the order if conditions in the State for modification are met.

7. *Comment:* Another commenter stated that, if the five percent or alternative State standard must be applied each time that the IV–D agency enforces health insurance deductions through the employer, then the two-day requirement to send the NMSN after a new hire hit should be addressed in this proposed rule. Is the IV–D agency still required to meet the two business day time standard set forth in 303.32(c)(2)?

Response: The IV–D agency is required to meet the two business day time standard in § 303.32(c)(2). A determination of whether health insurance is available at reasonable cost is not made between the time of receipt of information from the New Hire Directory and when the NMSN is issued two days later.

8. *Comment:* One commenter stated that the regulations should allow the IV–D agency to also petition for private insurance coverage even if the cost exceeds five percent of the obligated parent's gross income as long as that parent wants to provide or continue to provide such coverage.

Response: This would be allowable using the State's discretion under § 302.56(f) and (g) to rebut the presumption that the amount of support that would be ordered under the State's guidelines is the appropriate amount of support to be ordered.

9. *Comment:* A commenter asked, if there is an exception to having medical support in a IV–D support order if both parents are very low income, that this discretion be clearly stated in the regulation.

Response: We believe the regulation is adequately drafted. If both parents have low or no income, the State's option to establish an alternative to the five percent cost-reasonableness standard could cover this situation.

10. *Comment:* A number of commenters believe that the requirement set forth in § 303.31(a)(3) is too restrictive by offering only a guidelines alternative to the Federal five percent standard. The commenters stressed that, since guidelines nationwide are adopted variously as statute, regulation, or court rule, the regulatory language should be expanded by inserting the phrase ''under State law, regulation, or court rule having the force of law, or'' in § 303.31(a)(3) after the word ''support.''

Response: We agree that States adopt guidelines in various ways and have inserted the language in § 303.31(a)(3) to recognize that the cost-reasonableness standard may be addressed in ''State law, regulation, or court rule having the force of law or'' in State guidelines.

11. *Comment:* A commenter was concerned that the imposition of a ''reasonable'' numeric standard may decrease the number of children receiving health insurance because States already have a numeric standard in place to limit the amount of total support paid by the parent responsible: the Consumer Credit Protection Act (CCPA) limits. Using another standard for reasonable cost, one that is presumably lower than the CCPA limits, establishes inequities in parents' responsibilities to their children.

Response: The CCPA limits apply to the maximum amount that may be withheld from an employee's paycheck to meet that employee's responsibility to meet any obligations. It is not a substitute for a cost-reasonable quantitative standard as addressed in these regulations.

12. *Comment:* A commenter asked how the State is expected to obtain information regarding the cost of health insurance premiums when setting a medical support order that is reasonable in cost.

Response: States require parents to provide information at the time a support order is established. Information on private health insurance availability and the cost of that health insurance are reasonable components of that requirement.

13. *Comment:* A commenter asked, if a parent fails to provide income and/or the cost of obtaining health insurance information, are States to assume coverage is or is not available at reasonable cost?

Response: Under section 466(a)(19) of the Act, States are required to enact laws and use procedures under which support orders include medical support as part of any child support order. Should a parent fail to provide income or health insurance cost information upon request, the State must take independent steps to determine this information, including actions to compel a parent to disclose this information.

14. *Comment:* A commenter suggested that the five percent of gross income recommendation of the Working Group may be outdated and should be adjusted to a higher percentage. The commenter indicated that, according to 2004 statistics provided by Kaiser Family Foundation's State health facts, the average cost of family coverage in New York is $10,397 with $8,307 paid by employers and $2,090 paid by the employee. Based on the five percent rule, a parent would need to have gross income equal to or greater than $41,800 for such cost to be considered reasonable. The commenter also suggested that a self support reserve for parents whose incomes fall below 135 percent of the Federal poverty level be established as a low income protection in consideration of the increasing cost of health insurance borne by the employee.

Response: States have discretion under § 303.31(a)(3) to set a reasonable alternative income-based numeric standard that could include both suggestions.

15. *Comment:* A commenter suggested that, because cash medical support is defined by the proposed amendments to § 303.31(a)(1) to include ''an amount ordered to be paid toward the cost of health insurance * * *'', the reference in paragraph (a)(3) to ''or private health insurance'' after 'cash medical support' appears to be unnecessary.

Response: We believe it is important to include the phrase ''private health insurance'' in the paragraph because the definition of cash medical support only addresses amounts ordered to be paid toward the cost of health insurance provided by a public entity or by another parent but does not address the responsibility of a parent to secure private health insurance him or herself and pay any premium required by that insurance policy. We have added ''the cost of'' before that phrase ''private health insurance'' for additional clarity.

16. *Comment:* A commenter indicated that use of the term ''considered to be reasonable in cost'' in § 303.31(a)(3), appears to create a *per se* rule, not subject to rebuttal. If the regulation was intended to create a rebuttable presumption, then it should read ''Cash medical support or private health insurance is *presumed* reasonable * * * ''According to the commenter, allowing the five percent of gross income rule (or alternative State standard) to be rebutted would be consistent with § 302.56(f), which states that child support guidelines set by the States must create a rebuttable presumption that the guideline amount is correct.

Response: We believe the existing authority in § 302.56(f) and (g) to rebut the presumption that the amount of the order that would result from application of the guidelines is the correct amount to be awarded would apply to the five percent or alternative State standard on a case-by-case basis. Even if the standard for setting medical support orders is adopted by statute, regulation, or court rule having the force and effect of law, the cross-reference in § 302.56(c)(3) to § 303.31 includes the cost-reasonableness standard as an element of setting support orders that is rebuttable on a case-by-case basis. While the proposed rule only cross-referenced § 303.31(b), we believe that changing the cross-reference to the entire § 303.31 ties the cost-reasonable standard into the guidelines calculation, and therefore, the rebuttable presumption exception.

17. *Comment:* A commenter asked how the five percent reasonable cost limit is applied when the noncustodial parent has more than one case? For example, what if the noncustodial parent is ordered to pay cash medical support to the custodial parent of that child and, in the noncustodial parent's second case, the noncustodial parent is ordered to carry health insurance for the child of the relationship with the second custodial parent. Is the five percent or alternative State reasonable cost limit applied to each of the noncustodial parent's individual cases, or is it applied to all of the noncustodial parent's cases in the aggregate? If the limit is applied to each case individually, then what would be the limit if the noncustodial parent has more than one case?

Response: While Federal regulations do not impose requirements on application of guidelines in multiple cases involving the same noncustodial parent, State guidelines often provide guidance on imposing support obligations in cases involving a second or third family. We assume States would develop guidance for the suggested scenarios as well, as is appropriate, either as part of setting orders or as a rebuttable presumption to the ordered-amount on a case-by-case basis under § 302.56(f) and (g).

18. *Comment:* A commenter expressed concern about the option for States to implement an income-based numerical standard, without any limitation. The commenter recommends a Federal regulation implementing a limit on contribution toward the cost of coverage from low-income individuals. The proposed regulation commentary sites the New Jersey grant approach that ''no parents whose net income is at or below 200 percent of the Federal poverty level should be ordered to provide health care coverage, unless the coverage is available at no cost to the parent.'' The commenter recommends a similar limitation be enacted in the Federal regulations.

Response: The New Jersey grant project endorsed a standard of reasonableness measured against five percent of the net income of the person ordered to provide coverage. However, no coverage would be required from ''parents whose net income is at or below 200 percent of the Federal poverty level,'' unless the coverage is available at no cost to the parent. See A Feasibility Study for Review and Adjustment for Medical Support and SCHIP Collaboration (Feasibility Study). New Jersey's report is available at *http://www.acf.hhs.gov/programs/cse/pol/dcl/dcl-03-10.htm.* While we recognize the commenter's concern, we believe it is appropriate and consistent with State flexibility concepts to allow States to adopt a reasonable income-based numeric standard to the five percent standard. We are confident that States will turn to other States' adopted alternative standards for guidance in setting their own alternative standard.

19. *Comment:* A commenter asked if State statute that provides that a premium payment that is 20 percent or more of a parent's gross income is considered unreasonable would be acceptable as a State's ''reasonable alternative income-based numeric standard'' for whether health insurance is considered to be reasonable in cost.

Response: It is acceptable under the final regulation for a State to provide that a payment of 20 percent or more of a parent's gross income is unreasonable if that is the amount needed to add the child(ren) to existing coverage, or that is the amount of the difference between the cost of self-only and family coverage.

20. *Comment:* A couple of commenters pointed out that in the context of child support enforcement, the term ''obligated parent'' is almost universally used to refer to the person responsible for paying cash child support. A commenter stated that, while the commenter supports the new requirement under the Deficit Reduction Act (DRA) of 2005 that custodial parents may be ordered to provide health insurance, States are not required to enforce a medical support order against the custodial parent. Referring to the custodial parent as ''obligated parent'' is likely to cause confusion. The commenter recommends replacing ''obligated parent'' with ''the parent responsible for providing medical support'' or similar language.

Response: We agree with the commenter and, for clarity, we have substituted the phrase ''the parent responsible for providing medical support'' for ''obligated parent'' in § 303.31(a)(3).

21. *Comment:* Another commenter asked if the ''obligated parent'' means the parent ordered to provide private health insurance, the parent ordered to provide cash medical support, or both.

Response: The term ''obligated parent'' has been changed to ''the parent responsible for providing medical support.'' There could be multiple individuals ordered to provide medical support, including both the custodial and noncustodial parent. One parent could be ordered to provide health insurance and the other to pay or contribute to the cost of the premium, for example.

22. *Comment:* The proposed regulation does not discuss how medical costs will be divided if there are multiple children. Would the combined total for medical support be five percent, or would a separate percentage be indicated for each child (i.e., 2.5 percent for each child)?

Response: The five percent standard in § 303.31(a)(3) is linked to the obligated parent's gross income and not to the number of children. However, a State has the option of adopting a reasonable alternative income-based numeric standard defined by the State.

Section 303.31(b)—IV–D Agency's Responsibilities

1. Petitioning for Medical Support in Child Support Orders—§ 303.31(b)(1) and (2)

1. *Comment:* Under § 303.31(a)(1) and (2), health insurance can be either private or public insurance. If the definition of health insurance includes both public and private coverage, it should be clear that the evaluation for accessibility and affordability under § 303.31(b)(1) and (2) applies only to private health insurance. Each of those proposed rules uses the term ''health insurance.'' However, the preamble regarding these proposed rules unmistakably maintains that the court order should include ''private health insurance'' if it is accessible and affordable. That same language should be used in § 303.31(b)(1) and (2).

Response: We agree and have added the term ''private'' before ''health insurance'' in § 303.31(b)(1) and (2) of the regulations.

2. *Comment:* A commenter agreed that the new definition of reasonable cost mitigates the possibility that the cost of health insurance would reduce cash

child support awards for those with high-priced employer-sponsored insurance. However, the commenter expressed concern about the proposed rule's requirement that the IV–D agency must petition for a cash medical support order when private health insurance is not available at reasonable cost to either parent. The commenter believes that petitioning for cash medical support should be left to the discretion of the IV–D agency to enable States to strike the right balance on a case-by-case basis between the family's needs for cash child support and for cash medical support. Those without insurance have a range of different circumstances—some are self-employed with sufficient income to purchase insurance but have chosen not to get coverage, while others simply do not have enough money to pay for premiums.

The commenter also indicated that ordering a noncustodial parent to make a cash contribution toward public insurance expenses is likely to reduce the cash child support available to the poor families who need it most, with the result that some may seek Temporary Assistance for Needy Families (TANF) benefits. It also will impose a higher financial burden on noncustodial parents who are unemployed or underemployed in low-wage jobs that do not offer insurance at a reasonable cost, if at all.

Response: Section 466(a)(19) of the Act requires State laws and procedures which include a provision for medical support for the child be provided by either or both parents in all child support orders enforced under title IV–D of the Act. We believe it is more appropriate, as stated earlier, that States use current authority under § 302.56(f) and (g) to rebut the presumption that cash medical support be provided in the absence of private health insurance available to either parent on a case-by-case basis. In addition, a State is authorized to establish an alternative cost-reasonableness standard for cash medical support as well as the cost of private health insurance under § 303.31(a)(3).

3. *Comment:* A commenter suggested the last sentence of § 303.31(b)(2) be changed to provide that cash medical support ''may be sought,'' instead of ''may be ordered,'' since this section applies to the IV–D agency, not the entity setting child support orders.

Response: We agree with the commenter and have revised § 303.31(b)(2) as suggested.

4. *Comment:* A commenter asked for confirmation that § 303.31(b)(1)–(4) would not mandate a requirement to modify every order where insurance is not being provided to include a provision for cash medical support.

Response: These regulations do not apply retroactively to orders established prior to the implementation date; the requirements apply to new or modified orders established or modified after the date of publication.

5. *Comment:* A commenter explained that IV–D staff who act as local ''decision-makers,'' should not be required to review, evaluate, and select the appropriate coverage in accordance with the Federal regulations because it would require the IV–D staff to have a thorough understanding of the health needs of the children to be covered, a comparison of multiple insurance policy to meet the needs, determining if the insurance providers serve a specific area, and continual review every time health insurance coverage changes.

Response: The final regulations focus on two aspects of health insurance coverage: whether the insurance is reasonable in cost and accessible to the child(ren). We believe these two criteria are critical to ensuring children benefit from private health insurance coverage and parents providing it when appropriate. Health insurance has little or no value if the child does not have geographic access to the services provided by the coverage. Extensive scrutiny of various insurance plans is not mandated by the regulations.

6. *Comment:* Two commenters discussed the Working Group's suggestions that health insurance coverage is comprehensive if it includes at least medical and hospital coverage and provides for preventative, emergency, acute, and chronic care and that in deciding between two plans, the decision-maker consider factors such as basic dental coverage, orthodontics, eyeglasses, mental health services, and substance abuse treatment. The commenter indicated that, although the Working Group provided some interpretations of this term, the proposed regulations do not adopt any of these interpretations. The commenters indicated that the regulations should offer a specific definition of ''availability'' and ''comprehensiveness'' because the regulations essentially leave the definitions of these terms completely to the discretion of the State.

Response: The Working Group Report includes a wealth of information on medical support and is a valuable resource to States in determining how to establish procedures that meet Federal requirements but that may go well beyond the requirements in areas addressed in the Report and not mandated in the regulation. We believe it provides ample guidance for determining appropriate health care that is accessible, comprehensive, and affordable. The Federal regulation contain requirements for critical aspects of the medical support process but appropriately leave discretion to States to fine tune their medical support processes. We have encouraged State innovation and experimentation with respect to medical support initiatives and the knowledge gained from those projects as well as the results from independent State activities should be helpful to all States.

7. *Comment:* A commenter suggested that OCSE clarify that the order state the specific dollar amount cap or limit for the premium (which would be equivalent to five percent of the parent's gross income, or the alternative numeric definition adopted by the State) because nonspecific orders are very difficult for other States to monitor and enforce.

Response: We agree that States should consider establishing medical support obligations that state the specific dollar amount limit for a health insurance premium, whenever possible, to make enforcement of that order easier.

8. *Comment:* A commenter recommended that the regulation allow States to consider additional components of appropriateness as defined by the State, such as comprehensiveness or special needs of the child, when petitioning the court to include health insurance.

Response: States are free to consider additional components of appropriateness beyond those specified in the regulation.

9. *Comment:* The proposed rule requires States to petition for cash medical support until reasonably-priced health insurance becomes available. Does this mean States must develop automated means of tracking health insurance available to both parents? Such a proposal would require extensive reprogramming, especially since States would then have to track employment data for the custodial parent. If States are to use locate and tracking systems already in place, do they now have to submit data on the custodial parent to these resources?

Response: Section 303.31(b)(2) requires States to petition for cash medical support if health insurance is not available at the time the order is entered or modified and until such time as health insurance, that is accessible and reasonable in cost becomes available to either parent. Private health insurance, if available at reasonable cost and accessible to the child(ren), remains the preferred method of providing medical support for children.

There is no specific requirement for States to develop automated means of tracking health insurance available to both parents. However, States should currently have the capability to seek information from State and Federal sources on custodial parent's income, assets, and location for various IV–D program results and, States should be capturing the fact that a parent is providing health insurance or that the employee's employer does not offer health insurance. OCSE currently matches names in the Federal Case Registry, which includes custodial as well as noncustodial parents, with the National Directory of New Hires, and returns successful matches to each State.

10. *Comment:* The same commenter asked if the State learns, through current locate and tracking methods (i.e., New Hire Reporting, medical support vendor), that health insurance coverage is available, whether the State should initiate action to modify the order?

Response: When a State establishes a child support order, if the State does not include language ordering health insurance coverage, and only includes a cash medical support order, the State would have to petition to modify the order to require that health insurance coverage be provided before the new employee can be required to provide the insurance if it is reasonable in cost and accessible to the child. If the order already includes a requirement to provide health insurance that is reasonable in cost and accessible to the child when it becomes available, there would be no need to modify the order and the State could send the NMSN to the new employer within two days of receipt of the new hire information in the State Directory of New Hires.

11. *Comment:* A commenter asked, if the parent ordered to provide health insurance changes employment and the cost of the health insurance premiums at the new employer exceeds the reasonable cost standard, is the State required to take an action or is it incumbent upon the obligated parent to request a modification of the order? Please note, in this situation, the medical insurance was reasonable when the order was entered.

Response: As indicated earlier in response to a concern about the two-day timeframe to send a NMSN, it is reasonable for a IV–D agency to enforce a medical support order by sending the NMSN without reevaluating the cost-reasonableness of the ordered health insurance. Should the cost or availability of health insurance change, the obligated parent would be expected to seek modification of the order if conditions in the State for modification are met.

12. *Comment:* A commenter opined that, while one of the goals of the proposed changes to the regulation is to increase the number of children covered by private health insurance, the Federal five percent standard may actually result in fewer children being covered than are covered today. As current orders, where the children are already covered, are reviewed and modified to include the five percent standard, States may actually be required to terminate existing coverage where the existing premium does not meet the five percent standard.

Response: States have authority to set a reasonable alternative income-based numeric standard that is higher than the five percent standard. Or, a State may rebut the presumption in such a case that health insurance is not unreasonable in cost and order that private health insurance be provided.

13. *Comment:* A commenter suggested that ''at reasonable cost'' be added immediately after the phrase, ''petition to include cash medical support'' in § 303.31(b)(2) to be consistent with § 303.31(b)(1) that requires health insurance to be reasonable in cost.

Response: We agree and have revised § 303.31(b)(2) to add this condition as follows: ''If health insurance described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support that is reasonable in cost, as defined in paragraph (a)(3) of this section, in new or modified orders * * *''

14. *Comment:* Several commenters indicated that the proposed rule inserted into § 303.31(b)(2) an additional requirement beyond the requirement to petition for orders for cash medical support. The phrase, ''until such time as health insurance, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available'' may require IV–D agencies, which had already obtained an order for cash medical support, to seek modification to stop the order for cash medical support and to start an order for health insurance. This goes beyond the mandate in § 303.31(b)(3) and (4) to petition to include medical support in orders that do not address medical support if certain state-adopted criteria are met. We do not believe IV–D agencies have the resources to repeatedly modify orders that already contain provisions for medical support, in addition to the current IV–D mandates to review and adjust or modify support orders. We believe existing requirements to review orders under 42 U.S.C. 666(a)(10), and the proposed rule to re-evaluate medical support at every modification under § 303.31(b)(1), are sufficient. We recommend the proposed phrase and any such mandate be removed.

Response: We do not read § 303.31(b)(2) to mandate that a State petition to modify an order that includes cash medical support if the State learns, for example, through NDNH or SDNH data, that health insurance is now available. However, delaying petitioning for health insurance coverage for as long as three years would not be in the best interests of the children. If the order includes language that requires health insurance be provided should it become available in the future, and that cash medical support is ordered until such time, the need to petition to modify the order and allow the State to take steps to immediately secure private health insurance coverage for the children would be avoided. Absent such a provision, the State would need to petition to modify the order to take advantage of the currently available coverage.

15. *Comment:* One commenter stated that the proposal will delete § 303.31(b)(2) under which the IV–D agency must petition the court to include medical support whether or not health insurance was available to the parent at the time the order was entered. Is it the regulation's intent to weaken that requirement or is it assumed that other sections of the proposed regulation continue the mandate to include medical support whether or not it is available at the time the order is entered? Another commenter indicated that it is preferable to include language in all orders to require the obligors to carry health and dental insurance if it is available for a certain amount per month or to pay a specific amount per month in cash medical support if insurance is not available. The commenter said he/she had been using this language for almost two years now in an attempt to reduce the workload by needing fewer modifications of orders for medical insurance language.

Response: The mandate to include health insurance in a support order whether or not it is available at reasonable cost at the time the order is entered is eliminated in the revision to § 303.31(b)(2). However, as stated above by the second commenter, we believe it would be prudent for States to consider continuing to include such language to avoid the need to revise the order should the State learn that health insurance, that is accessible and reasonable in cost, becomes available

through a change of employment or otherwise.

16. *Comment:* If cash medical support goes unpaid, would arrears accrue? If so, this seems inequitable because if the premium were to go unpaid due to CCPA limits and the priority for employer allocation of funds withheld, arrears aren't accrued. This will negatively impact arrears.

Response: Cash medical support that is unpaid becomes an arrearage just like any other ordered payment of support. If a health insurance premium is unpaid in the circumstances mentioned above, a State might consider reevaluating the support order to ensure that it is set at an amount the obligated parent can afford, based on his or her current ability to pay.

17. *Comment:* A State's guidelines that currently provide adjustment of the basic support obligation based on which party is providing coverage/paying the premium seems to be consistent with the intent of the proposed rule. It does not seem worthwhile to order a cash medical amount to be paid toward the cost of health insurance provided by another parent. If this were to become a mandate, it would seem more worthwhile to mandate a cash medical amount to be paid only toward the cost of health insurance provided by a public entity.

Response: While the definition of cash medical support includes payments toward health insurance provided by a public entity or another person, States are not required to include in every order an amount to be paid toward the cost of health insurance provided by another parent, or by a public entity for that matter. How the State meets the requirement to provide for medical support in every order depends on State law and child support guidelines, including the type described in the question.

18. *Comment:* It appears from the proposed rule that a State would have to differentiate between cash medical support owed to Medicaid, SCHIP, and the custodial parent. This will require significant technical enhancements, as we need to develop an interface with SCHIP, and our automated system would require a major allocation of resources and time to accommodate cash medical.

Response: Section 303.31(b)(2) does not require a State to order cash medical support to be paid to a Medicaid or SCHIP agency. These options are included as possibilities because some families may best receive health care, in the absence of private health insurance, through receipt of Medicaid or SCHIP services should those families be determined to be eligible for those programs' services. It is up to a State to determine how best to provide medical support consistent with the Federal requirements in § 303.31.

19. *Comment:* A cash contribution toward medical support is potentially a simple surcharge for the support obligations of all low income obligors. The contribution will not purchase insurance, which cannot be purchased piecemeal. Contributions toward unpaid medical expenses are better obtained after the fact, with proof of such expenses. Otherwise, there could be a demand for accounting of how the ''medical contribution'' is expended. Such a requirement would be detrimental. It would take valuable court time, foster a battleground to refuel old resentments, and require proof that is unlikely to exist, given the way many households, especially those with very limited incomes, operate. The medical cash contribution would likely open the door to further calls for child support accounting. For this reason, cash contributions toward medical costs should be based on actual expenditures.

Response: We agree that requiring custodial parents to account for how ordered support is expended is detrimental in the ways described. We believe it is inappropriate to consider such an approach absent clear evidence that this is an identified problem. It is up to a State to determine how cash medical support will be ordered in appropriate cases.

20. *Comment:* The requirement that IV–D agencies petition for medical support when there is evidence that either parent may have coverage available at reasonable cost, should be limited to situations where there is no SCHIP coverage. SCHIP coverage may be available to families at higher incomes in some States than in some other States. For example, families with incomes between 135 and 185 percent of poverty can qualify for SCHIP coverage with co-payments but no premiums. Under the proposed rule, a custodial parent in this situation could conceivably have access to coverage for five percent of gross income or less and the noncustodial parent could be ordered to contribute toward the capitated cost of the SCHIP coverage. States should be afforded leeway not to pursue the custodial parent for employer-sponsored insurance in this situation, especially where there is a mechanism in place for the recovery of the cost of the SCHIP payments.

Response: States have discretion under these regulations and existing child support guidelines to rebut the presumption that the result of an application of the State's law and guidelines would not be appropriate in a particular case, as long as there is a specific written finding on the record in accordance with § 302.56(f) and (g).

21. *Comment:* If private health insurance is not available, States are required to ensure orders are entered for cash medical support until private health insurance is available. The courts in various jurisdictions prohibit the IV–D agency from unilaterally enforcing orders to secure health insurance if reasonable in cost through employment without a review under the support guidelines. These restrictive orders have posed a quandary for the IV–D agency's ability to use automation fully. Currently a State must review each and every order prior to enforcing the medical support provision. This would definitely be the case under the new regulation. States will most likely use the review and adjustment process to review the parties' income and availability of private health coverage and require adjustment to the child support cash award to account for the private health insurance. This will potentially have significant impact on workload associated with constant review and adjustment activities as custodial and noncustodial parent employment and insurance coverage change.

Response: Children need appropriate health care and their parents should be the first source of available health care for their children. States should do everything possible to ensure coverage when private health insurance is available at reasonable cost and accessible to the children.

22. *Comment:* When health insurance is not available at a reasonable cost and/or is not accessible under the State's definition, if the court enters an order requiring each parent to pay 50 percent of medical expenses without ordering a specific dollar amount, is that considered ''medical support provided'' for purposes of the OCSE 157 report?

Response: It would only be considered ''medical support provided'' on the OCSE form 157 if the State received from one parent a bill for medical expenses for the child and then recovered 50 percent of the bill amount or any portion thereof from the other obligated parent.

23. *Comment:* A commenter indicated that § 303.31(b)(2) appears to require States to seek orders for cash medical support that are contingent upon the unavailability of medical insurance. For the order to be a judgment by operation of law, as required by 42 U.S.C. 666(a)(9), the order must be final and in a fixed amount that is clear on the

record. OCSE should encourage States to ensure that both requirements are observed in applying the new regulation.

Response: Section 466(a)(9) of the Act does not require medical support orders to be in a fixed amount that is clear on the record. Rather, that section requires in part that any payment of support under any child support order is a judgment by operation of law, with the full force, effect and attributes of a judgment of the State, including the ability to be enforced. This regulation provides States with a number of options for ensuring medical support is provided for children by their parents whenever possible. The various methods allowed by the regulations and discussed in many of these comments and responses are consistent with the requirements of title IV–D of the Act.

24. *Comment:* One commenter stated that the Working Group recommended that geographic access be determined by a 30 miles/30 minutes standard. The commenter also recommended that coverage be sought only if, based on the obligated parent's work history, coverage was likely to be in place for at least one year. Under the Working Group's proposal, States would have the option to adopt different standards if they felt it appropriate. The commenter recommended that the Federal regulations adopt the Working Group's approach rather than leave the definition of accessibility up to States. While recognizing the need for some State flexibility, the commenter also believes that Federal guidance on the standards to be used is appropriate. Another commenter indicated that the description of accessibility in the Working Group Report is somewhat problematic in rural America as there are numerous places where it would be further than 30 minutes or 30 miles to a doctor, but health insurance coverage would still be worthwhile to the custodian.

Response: The Working Group's Report is full of recommendations States should consider in determining the appropriate approach to securing medical support from parents. The 30 mile/30 minute standard for accessibility in the Report seems to be a good benchmark. We are unaware of any strong reason, however, to place an additional requirement on States unless there is evidence that it is needed. Therefore, we encourage States to consider the 30 mile/30 minute standard if appropriate. However, it is up to the State to define ''accessible'' and therefore, a different definition is acceptable.

25. *Comment:* A commenter requested regulatory guidance with respect to interstate cases. How will States be audited when enforcing support collection in a responding case with respect to medical support enforcement? Is it the responsibility of the initiating State to modify its medical support order requirement when the noncustodial parent obviously resides where services and providers are unavailable to the child in the initiating State?

Response: If a responding State has been asked by an initiating State to establish a medical support order, the responding State must determine if private health insurance is accessible to the children and available to the noncustodial parent at reasonable cost. If health insurance is not accessible or available at reasonable cost to the noncustodial parent, the responding State should inform the initiating State and the initiating State should determine if private health insurance is available to the custodial parent. If private health insurance is available to the custodial parent at reasonable cost and accessible to the children, the initiating State should require the custodial parent to secure the health insurance coverage and inform the responding State. If the initiating State requires the custodial parent to secure private health insurance, the responding State should determine whether or not to require the noncustodial parent to provide cash medical support to the custodial parent. If private health insurance is not accessible to the child(ren) or available at reasonable cost to the custodial parent, the initiating State should notify the responding State so that the responding State may seek cash medical support from the noncustodial parent.

In response to the question about how States will be audited in a responding State with respect to medical support enforcement, States are required to report information regarding the enforcement of cash medical support obligations, including interstate case activity, on the OCSE–157 in accordance with OCSE AT–05–09 dated September 6, 2005. Additionally, information related to the enforcement of medical support obligations reported on several lines of the OCSE–157 for Intrastate and Interstate IV–D cases is subject to the Data Reliability Audit in accordance with the document entitled ''Data Reliability Guide for Auditing'' issued by the Federal Office of Child Support Enforcement. And finally, medical support enforcement activities are included as part of a State's self-assessment under 45 CFR 308.2(e).

26. *Comment:* A commenter requested a more thorough definition of what is included in ''medical care.'' Federal guidance would prove helpful to more than just the IV–D program. The draft rule mentions allergy shots, orthodontic treatment, and psychological counseling as covered medical care costs. Would this also include routine dental preventive care, fillings, root canals, crowns, etc. performed by licensed dentists, endodontists, or oral surgeons?

Response: We believe that States are in a better position to define comprehensive health care coverage. However, a definition of comprehensive dental insurance that provides for the suggested services could be adopted by the State.

27. *Comment:* If the court orders the custodial parent to pay cash medical support to the noncustodial parent, the IV–D agency may have to open a second case for the cash medical support obligation because there are multiple payers and payees. Would OCSE re-affirm or re-state its position on whether or not:

(1) The IV–D agency is responsible for recording (in the statewide computer system) certain obligations that have been placed on the custodial parent;

(2) The IV–D agency is responsible for monitoring compliance with certain obligations that have been placed on the custodial parent; or

(3) The IV–D agency is responsible for enforcing certain obligations that have been placed on the custodial parent.

Response: A State is responsible for monitoring support obligations, even if the State opts not to enforce them because the State needs to know if the custodial parent has covered the children or not, if ordered to do so. This information is important for Medicaid purposes or for purposes of modifying the order. It could also help a State determine if enforcement against custodial parents is needed or not, to make an informed decision as to whether or not to enforce orders against custodial parents using the NMSN.

28. *Comment:* The proposed rule's preamble states, ''For example, if a custodial parent of a child enrolled in SCHIP is required to pay a co-payment or premium for SCHIP, the cash medical support obligation of the noncustodial parent could be used to pay or reimburse the custodial parent for any co-payment or premium owed to SCHIP.'' In the sentence, it is unclear who ''required'' the custodial parent to pay a co-payment (is it a reference to a court order or is it a reference to a SCHIP agency's payment expectation?).

Response: It is a reference to a SCHIP agency payment expectation.

29: *Comment:* Is the IV–D agency expected to: (1) Establish a cash medical support obligation against a custodial parent receiving Medicaid (an amount presumably payable to the Medicaid agency) if appropriate? (2) Establish a health insurance obligation against a custodial parent receiving Medicaid, if appropriate?

Response: If after taking all steps required to determine if health insurance is available to either parent, application of the State's guidelines, and a determination that the health insurance available to the custodial parent is reasonable in cost and accessible to the child(ren) are met, it would be appropriate to require the custodial parent to secure such health insurance for the child(ren), unless the State rebuts the presumption that the results of these calculations would be inappropriate in a particular case, as authorized in § 303.56(f) and (g). Similarly, with respect to cash medical support, a State would need to go through the steps of determining appropriate medical support requirements to be included in the order, and an order against the custodial parent for cash medical support might be appropriate.

2. Petitioning To Modify Existing Orders To Include Medical Support Based on Criteria Established by the State § 303.31(b)(3)–(4)

1. *Comment:* A commenter stated that the ''written criteria'' in § 303.31(b)(3)(i) should be re-written as follows: ''Establish written criteria to identify orders that do not address the health care needs of children based on * * * Evidence that health insurance *that is accessible to the child(ren), as defined by the State,* may be available to either parent *at reasonable cost, as defined under paragraph (a)(3) of this section* * * *.'' This would ensure the concepts of accessibility and reasonable cost are consistently brought into the written criteria requirement.

Response: We agree and have made the change to § 303.31(b)(3)(i).

2. *Comment:* The proposed § 303.31(b)(3)(ii) should be clarified by deleting the last phrase: ''and (2) of this section''. Clause (i) requires the criteria include evidence that health insurance may be available. This seems appropriate. However, by adding the last phrase in clause (ii) the rule would require, in addition to evidence health insurance may be available, that ''health insurance * * * is not available'', which is what (b)(2) specifies.

Response: We agree and have removed reference to paragraph (b)(2) in § 303.31(b)(3)(ii).

3. *Comment:* The proposed § 303.31(b)(3)(i) requires States to establish criteria to identify when health insurance may be available. Because health insurance can include health insurance provided by a public entity, the regulation should be clarified to remove any mandate the IV–D agency must identify when a child might be eligible for Medicaid or SCHIP.

Response: We agree and this result was not our intent. Therefore, we have inserted ''private'' before the words ''health insurance'' in § 303.31(b)(3)(i).

3. Providing Notice of Health Insurance Policy Information to the Custodian—Former § 303.31(b)(5) and Notice to the Medicaid Agency—Proposed § 303.31(b)(5)

1. *Comment:* Two commenters suggested that deleting former subsection (b)(5), which required the IV–D agency to provide the custodian with health insurance policy information, may result in custodial persons not receiving notice regarding health coverage from plans that are not sponsored by employers or if the IV–D agency did not provide the custodian's address on the NMSN because of security concerns, such as domestic violence. While employers are required to provide information to the Alternate Recipient pursuant to a NMSN, no such requirement exists if the health coverage is provided through nonemployer sponsored plans. State IV–D agencies should retain responsibility for advising parents of the health care coverage that has been secured.

Response: While we agree that in some instances, such as those mentioned above, custodial parents may not get notice of health plan information from the plan administrator, we believe the IV–D agency will be well aware of those instances in which notice to the custodial parent remains necessary and provide notice in those instances, without a Federal mandate to do so.

2. *Comment:* Several commenters indicated that proposed § 303.31(b)(5) states that the IV–D agency should inform the Medicaid Agency when a new or modified court order for child support includes health insurance and/or cash medical support. Rather than mandating that child support notifies the Medicaid Agency every time health insurance or cash medical support is ordered, it is more worthwhile to institute this requirement on cases where the children are enrolled in health coverage and/or cash medical support payments have actually been collected.

Response: Based on these comments and upon review of §§ 303.31(b)(5), 303.30(a)(7) and 302.51(c)(1), we believe § 303.31(b)(5) is unnecessary and have deleted it from the regulation. We agree that it is preferable to provide the Medicaid agency with health insurance coverage information at the time the insurance is provided. Section 303.30(b) requires the IV–D agency to inform the Medicaid agency whether the noncustodial parent has a health insurance policy and, if so, the policy names and number(s) and name(s) of person(s) covered, in accordance with § 303.30(a)(7). In addition, § 302.51(c)(1) requires the IV–D agency to send assigned cash medical support collections to the Medicaid agency. Therefore, since these two existing requirements already require appropriate notice to the Medicaid agency, § 303.31(b)(5) is redundant and has been removed.

3. *Comment:* We recommend that § 303.31(b) be modified to include language requiring that custodial parents provide evidence of enrollment of the child(ren) in a health care plan if receiving cash medical support for premiums from the noncustodial parent.

Response: As indicated, States are not required to enforce orders requiring the custodial parent to provide medical support. However, State should require custodial parents ordered to provide health insurance to provide proof of the children's coverage whether or not a noncustodial parent is ordered to contribute to the cost of the insurance and whether or not the State opts to enforce the order against the custodial parent should he or she fail to provide the ordered coverage. Without requiring such notice, a State would not be able to meet its requirement to notify the Medicaid agency of the health insurance information or would not be able to report on the 157 statistical report that medical support is ordered and provided.

4. Notice That Medical Support Services Will Be Provided in All IV–D Cases—§ 303.31(c)

1. *Comment:* Section 303.31(c) would require the IV–D agency to inform the non-IV–A applicant for IV–D services that ''medical support enforcement services'' will be provided. We would suggest that ''medical support services'' be used instead. Including the word ''enforcement'' has a limited connotation and may be construed as not including establishment of medical support obligations.

Response: We agree and have deleted ''enforcement'' from § 303.31(c). However, a discussed above, a State may opt not to enforce medical support orders against custodial parents.

5. Distribution and Disbursement of Cash Medical Support

1. *Comment:* May the State Disbursement Unit (SDU) distribute a cash medical support collection to an SCHIP agency? What if this is a State in which SCHIP is not a Medicaid expansion program, but distinct from Medicaid? We note under 42 U.S.C. 657, 654(5) and 654(11), collections under the IV–D program may be retained by the State if assigned under IV–A or IV–E or Medicaid programs, or must be distributed to the family. (There is no assignment of medical support to the SCHIP program in States which do not have the Medicaid expansion program.)

Response: There may be circumstances under which the SDU may send support payments to an address other than that of the obligee, for example, if a Tribe operates a Tribal TANF program, requires as a condition of eligibility for Tribal TANF that an individual assign support rights to the Tribe and the individual is receiving IV–D services from the State; or if an obligee provides an address other than a home address to the SDU and directs the SDU to send support payments to that address; or if a State SCHIP program opted to require an assignment of support rights, and cooperation with the IV–D program as a condition of receiving SCHIP in the State.

2. *Comment:* One commenter asked for clarification that all types of cash medical support should be paid to the IV–D agency and then distributed and disbursed by the SDU.

Response: All child, spousal, and cash medical support payments collected by the IV–D program must be paid to the SDU in accordance with section 454B of the Act.

3. *Comment:* A commenter indicated that distribution of cash medical support paid to a public entity needs to be clarified. The preamble states that a ''health insurance premium or cash medical support obligation is current support for purposes of distribution and allocation between cash child support and cash medical support.'' This distribution issue is not addressed in the body of the proposed regulation. However, if cash medical support is always treated as current support, the IV–D agency would, in some instances, distribute money to the State Medicaid agency as cash medical support before it distributes money owed to the family as cash child support. This would appear to be contrary to the family first distribution rules in 42 U.S.C. 657.

Response: The preamble language was unclear. A cash medical support collection would be considered current support only if the support was paid timely and in the specific amount required in the order to be paid periodically. Should that amount not be paid timely, the unpaid obligation becomes past-due just like any unpaid current child support obligation. In addition, if a family is receiving Medicaid and has assigned rights to cash medical support but is no longer receiving TANF, current cash child support would be paid to the family and assigned current cash medical support would be paid to the Medicaid agency.

Section 454(5)(B) of the Act requires that ''in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912 [of the Act], such payments shall be made to the State for distribution pursuant to section 1912, except this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance.'' These requirements are also addressed at § 302.51(c)(1) which requires the IV–D agency to forward assigned medical support payments to the Medicaid agency for distribution under 42 CFR 433.154. Under § 302.51(c)(2), when a family ceases receiving Medicaid, the medical support assignment terminates, ''except with respect to any unpaid medical support obligation that has accrued under the assignment.'' The subsection further requires the IV–D agency to attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes and forward amounts collected to the Medicaid agency for distribution under 42 CFR 433.154.

4. *Comment:* If States elect to pass through support in accordance with revised section 457(a)(1) of the Act, as amended by the DRA of 2005, what will be the distribution scheme for pass-through States that also elect to have a cash contribution requirement for Medicaid cases, if the payment cannot cover both or all?

Response: OCSE–AT–98–24, *http://www.acf.dhhs.gov/programs/cse/pol/AT/1998/at-9824.htm*, states:

ANSWER 22: Section 457 of the Act does not address specifically distribution of medical support collections. However, distribution of assigned medical support is addressed under section 1912(b) of the Act and 42 CFR 433.154, statute and regulations governing the Medicaid program. In addition, section 459(i)(2) of the Act defines child support to include orders which provide ''for monetary support, health care, arrearages or reimbursement * * * '' And, Federal regulations at 45 CFR 302.51 address disbursement of assigned medical support and require that:

(1) Amounts collected by the IV–D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV–D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV–D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

Federal distribution regulations at 45 CFR 302.51 apply to both child and medical support payments which are ordered to be paid in specific dollar amounts. In the preamble to the final regulations published in the **Federal Register** on February 26, 1991 (56 FR 7988) and issued by OCSE–AT–91–01 on March 8, 1991, we stated that: ''When less than the total amount of the obligation is collected, the IV–D agency should allocate the amount collected between the child support and the medical support specified in the order in proportionate shares. Current support must be given priority over past-due support, except with respect to collections made through the Federal income tax refund offset process.'' The allocation of collections between child support and medical support would apply to payments on arrearages as well as current support. See also OCSE–PIQ's–93–05 and 93–06.

Once a State allocates the amount collected between child support and medical support designated in the support order, distribution of any medical support collection must be in accordance with 45 CFR 302.51, section 457 of the Act and OCSE–AT–97–17, including the order in which assigned financial and medical support collections are distributed and the forwarding to the title XIX agency of any amount of assigned medical support.

6. National Medical Support Notice (NMSN)—§ 303.32

1. *Comment:* Changes to the NMSN are not included in the proposed rule changes. However, § 303.32(a) directs the use of the NMSN specifically for noncustodial parents. The proposed rules allow the custodial parent to be ordered to carry health insurance, so it seems appropriate to allow agencies to

use the NMSN to enforce that obligation. Some changes also need to be made to the notice itself to make it appropriate for use for custodial parents. For example, the NMSN often uses the term ''noncustodial parent/participant.'' With the rule changes, the custodial parent could be the participant.

Response: Necessary changes to the NMSN will be made before February 2008, when approval for the NMSN must be renewed. However, States may use the current version of the NMSN to enforce an order requiring a custodial parent to provide health insurance coverage through her employment. Changes to § 303.32(a) to include reference to use of the NMSN when the responsible parent is the custodial parent are addressed later in this preamble.

2. *Comment:* OCSE received the greatest number and disparity of comments on the proposed requirement in § 303.32(c)(4)(ii) that establishes a priority in which different types of child and medical support obligations must be satisfied if there are insufficient funds available to meet the employee's contribution necessary for coverage of the child(ren) and to also comply with any withholding orders received by the employer with respect to the same employee. Rather than list and respond separately to all comments received on the proposed priority order, the following paragraphs summarize the many, varied positions and rationale expressed by commenters and the response that follows explains the conclusion drawn from these widely divergent preferences. We believe it is important to consider the body of comments provided and to then explain the conclusions drawn from the comments as a whole, and changes made to the proposed regulation based on the comments.

Only a couple of commenters were satisfied with the proposed priority order for satisfying various obligations. However, these commenters had concerns about the possible conflict with child support distribution requirements, discussed in more detail below. A number of commenters preferred that States continue to be allowed to set a priority among health insurance premiums, current child support, current cash medical support, spousal support, and arrearages in situations in which all obligations cannot be satisfied because of the Consumer Credit Protection Act limits on the amount of money that may be withheld from an employee's wages. Other commenters preferred a priority that would satisfy health care premiums before current child support because unless the entire health insurance premium is paid, the policy would be cancelled and the child(ren) would lose coverage. Several others, citing good social policy, preferred to satisfy all current child and medical support obligations before satisfying any spousal support obligation, because securing child support is the IV–D program's primary goal. Still others preferred to satisfy all child support before applying any withheld amount to health insurance premiums or cash medical support.

Some of these latter commenters opposed the priority set out in the proposed rule because in their view it was contrary to ''family first'' distribution authorized under the DRA of 2005 and would result in some families receiving less child support that is critical to their self-sufficiency. Several of these commenters argued that any child support owed to the family should be satisfied before any portion of the amount withheld is applied to cash medical support assigned to the State as a condition of receipt of Medicaid. Still others wanted all child support, current and arrearages, to be satisfied before any health insurance premium or cash medical support obligation. Others requested that employers be directed to follow the directive of a custodial parent in a nonassistance case if there are insufficient funds to provide both current child support and health insurance coverage, and the custodial parent prefers to receive health insurance coverage over child support, or vice versa.

A number of commenters were concerned that the priority set forth in § 303.32(c)(4)(ii) was inconsistent with and violated the Federal requirements for distribution of child support collections in section 457 of the Act, § 302.51 and guidance issued by OCSE. One commenter liked the proposed priority but was concerned that it is in conflict with the established distribution hierarchy which the commenter believes places current child support and medical support above spousal support. Others proposed that the priority language be included in § 303.100, which contains Federal requirements for withholding income. And still others did not object to the priority order that applied to employers because once the withheld amounts are received by the IV–D agency, the Federal distribution rules would apply and, in fact, the amounts withheld may not be applied to satisfy obligations in the same sequence that employers are required to follow.

There were a number of commenters concerned with the phrase ''Other child support obligations'' which appears in proposed § 303.32(c)(4)(ii)(D) because the phrase is unclear and leaves a number of unresolved potential issues about what is included or excluded from that phrase. Among those listed were: What is a State to do if there is more than one child support order? Does the reference to ''other child support obligations'' include child support orders with respect to different child(ren) of the same obligated parents? Or does the priority of satisfying arrearages before ''other child support obligations'' violate the Federal distribution requirement to pay current support before arrearages? What if a State integrates day care, education, long distance transportation, and other child rearing costs into the cash child support amount? Does the regulation intend that these awards are all examples of ''other child support obligations?''

Some commenters wanted OCSE to clarify that the priority applied in both IV–D and non-IV–D cases while others asked for clarification that the priority applied only to IV–D cases. Another asked if the priority applied only to payments from employers or if all payments would be subject to this prioritization. Another commenter objected to the option, in § 303.32(c)(4)(ii), to allow courts or administrative decision-makers to set a different priority in a support order than that laid out in the regulation because it would be confusing to employers and, if allowed, any alternative to the general priority order must be determined to be in the best interest of the child(ren) involved. Another commenter favored this flexibility provided in the proposed regulation to allow deviation from the prescribed priority if included in the court or administrative order. A commenter also raised the possibility of employers receiving multiple income withholding orders for multiple custodial parents and child(ren) against a single employee, each with a different priority.

One commenter stated that the proposed priority scheme imposes a new requirement on States, and that, while well intended, this provision is problematic in that it may conflict with State law, regulation or procedure that have been in place for some time in the absence of a federally-imposed priority, as to the treatment of health care costs under the State's support guidelines or otherwise. For example, some States' guidelines may require that health insurance premium costs must be considered as mandatory and are netted

out of income prior to the calculation of the support amount. In this example, placing current child support withholding as a priority over withholding for health insurance would conflict with other State law. Employers will have difficulty in determining amounts to be withheld in the circumstance wherein there is sufficient income to withhold current support, not enough to withhold for the health insurance premium (which must be paid in full) but enough that support could be withheld to address arrears. The current regulation does not set a Federal priority and thus has allowed States flexibility in consideration of health insurance costs and State policy choices. This commenter believes that the election of priorities between current support, medical support, and payment of arrears for the support of the children implicates significant policy issues and concerns. And, according to the commenter, such choices are made by Congress or State legislatures.

And finally, a commenter argued that, as part of the NMSN requirements, States were given the flexibility and the option of deciding the respective priority scheme for the payment of current child support, child support arrearages, and medical support. Each State carefully considered its options, and made its respective decision of the appropriate priority scheme, in its implementation of the NMSN requirements. The commenter requests that the final regulation continue to afford States with this much needed flexibility in order to meet the needs of each individual State as to the priority of withholding with respect to current child support, child support arrears, and medical support or health insurance.

Response: We have found the body of comments to be compelling in its diversity, conviction, and expressed concerns with the approach contained in the proposed regulation. While there are a number of issues raised in the comments summarized above that would warrant explanation or correction were we to retain the proposed priority, we have concluded that for a number of reasons, including many articulated by commenters above, it is inappropriate at this time (six years after final regulations governing the NMSN were issued), to impose a mandated priority where States to date have been afforded flexibility.

There is no evidence of which we are aware that compels setting a federal-level priority for employers to use in circumstances in which the CCPA limits preclude satisfaction of all obligations. States, in good faith, considered this issue, and as allowed under the NMSN regulations, determined the best approach to take given the circumstances in the particular State, including, as suggested above, the different ways that State guidelines calculate child support and determine parental responsibility for the health care needs of children. There was no general consensus in comments about an alternative priority, or suggestions for resolving some of the more complex scenarios set out in the comments, for example, multiple NMSNs and withholding orders received by the same employer for the same employee but for different families and from different States. While such situations are possible, articulating in Federal regulations how States are to resolve such issues goes far beyond the level of detail addressed in Federal regulations. These issues are best resolved on a case-by-case basis, if and when they occur and States have many years experience with such circumstances, however rare they may be.

Had Federal regulations governing the NMSN that were published in late 2000, shortly after the Working Group's Report was sent to the Congress in August of 2000, contained a mandated priority order for employers to use when faced with inadequate wages to satisfy all support orders, States would not have proceeded to determine the appropriate priority order. Some may have adopted a portion or most of the priority order recommended in that Report and proposed in these regulations. However, we are convinced by commenters that to do so at this time, more than six years after States have used the flexibility accorded to them in the NMSN regulations, would be inappropriate and ill-timed. Therefore, we have removed the changes proposed in § 303.32(c)(4) and that regulation will remain as in current regulations as follows: Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

We do believe, however, that it is important to address some misconceptions States have with respect to various distribution requirements in Federal regulations with respect to child support and cash medical support collections, including those assigned to the State and owed to families. And we intend that, as requested by some commenters, the Distribution Workgroup will further consider the intersection of distribution requirements for child and medical support, beyond the clarifications articulated later in this preamble.

3. *Comment:* Several commenters expressed concern that, even if IV–D agencies substitute the agency addresses on the NMSN, noncustodial parents receive information about family doctors and medical issues on the explanation of benefits forms that they receive as policyholders. One commenter indicated that when the IV–D agency explains this to custodial parents with safety concerns, many of those who have relocated due to family violence would rather forgo enforcement of medical support than take the risk that the noncustodial parent could discover their location. Certain custodial parents with compelling safety concerns therefore choose to take on the responsibility and cost required to provide health insurance for their children so that they can retain control of their personal information. Yet noncustodial parents who may present a danger to their families should remain accountable for medical support for their children whenever possible. The commenter believes that cash medical support can be an appropriate option in these situations and asked that States be permitted to tailor medical support orders in this way, when appropriate for cases that have critical safety needs.

Response: We believe it would be appropriate in the circumstances described above for a State to rebut the presumption that the noncustodial parent should be ordered to provide health insurance, in accordance with § 302.56(f) and (g) if supported by a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State. The State's criteria for rebutting the guidelines presumption must take into consideration the best interests of the child, and therefore, allow an exception to order cash medical support in the circumstances described by the commenter.

4. *Comment:* One commenter stated that the DRA of 2005 makes enforcement of medical support order against custodial persons optional. Therefore, the commenter suggested that the language in § 303.32 be clarified to provide that the NMSN is only mandatory against employers of noncustodial parents.

Response: We agree that addressing the option to enforce an order against a custodial parent using the NMSN in § 303.32 would be appropriate, as well as making a parallel conforming change to § 308.2(e)(3). Therefore, we have made a change to § 303.32(a), which requires use of the NMSN to enforce the

provision of health care coverage of children of noncustodial parents, to include reference to ''and, at State option, custodial parents'' after reference to ''noncustodial parents''. For conformity, we also added reference to ''custodial parent's, at State option,'' after the term ''noncustodial parent's'' in § 303.32(c)(6), so that employers must notify the State agency promptly whenever a noncustodial parent's or custodial parent's, at State option, employment is terminated.

5. *Comment:* Several commenters expressed concern that the proposed priority order of satisfaction of cash medical support vs. child support would, in some circumstances result in the State being paid cash medical support first before the family receives its arrearages. Commenters were concerned that satisfying assigned cash medical support before satisfying child support arrearages owed to the family in former assistance cases would violate distribution requirements under section 457 of the Act, § 303.51, and guidance issued by OCSE.

Response: Although we have removed the proposed revision to § 303.32(c)(4) in response to comments addressed earlier in this preamble, we believe it is important to respond to State concerns about violation of child support distribution rules in Federal statute and regulations if an employer withholds payments to satisfy assigned cash medical support before withholding amounts to satisfy child support arrearages, and a State retains assigned cash medical support collections when child support arrearages are owed to a former assistance family. Title IV–D of the Act contains requirements for distribution of child support collections under section 457 of the Act and distinct requirements for distribution of assigned cash medical support collections under section 454(5) of the Act. Under section 454(5)(B) of the Act, ''in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912 [the Medicaid program assignment requirement], such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance.'' Federal regulations at § 302.51(c)(1) require that the ''amounts collected by the IV–D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 45 CFR 433.154.''

Therefore, if, in accordance with a support order, amounts are collected which represent both child support (whether assigned to the State or owed to a family), and cash medical support assigned to the State, Federal statute and regulations specify how such amounts are to be distributed. A cash medical support collection in accordance with a support order is not child support and therefore, not subject to child support distribution requirements. Removing the proposed priority for employers to use to satisfy various support obligations does not impact the employer's responsibility to meet the requirements under § 303.100(a)(5) for dealing with multiple withholding notices or the State's responsibility to meet all distribution requirements addressed above.

6. *Comment:* A commenter asked whether a change was needed to § 302.32(a) because it mentions ''health care coverage,'' in light of the inclusion of a definition for ''health insurance'' (rather than ''health care coverage'') in the new § 303.31(a).

Response: No. The term ''health care coverage'' is used in section 466(a)(19) of the Act. The term ''health insurance'' as defined in § 303.31(a)(2), and ''cash medical support'' as defined in § 303.31(a)(1) are each a type of health care coverage.

Part 304

Section 304.20—Availability and Rate of Federal Financial Participation (FFP)

1. *Comment:* A commenter agreed with the change to § 304.20(b)(11) to add reference to § 303.32 on use of the NMSN, but pointed out an inconsistency between § 304.20(b)(11) which allows FFP for required medical support activities under §§ 303.30, 303.31, and 303.32, and § 304.23(g) that prohibits FFP for the medical support activity performed under cooperative agreements in accordance with §§ 303.30 and 303.31. The commenter indicated his State had interpreted § 304.20(b)(1)(ix), which allows FFP for the cost of the establishment of agreements with Medicaid agencies necessary to carry out required IV–D activities with respect to the Medicaid program, and § 304.23(g), to require an agreement between the IV–D and XIX agencies to be funded by Title XIX incentives.

Response: Section 304.23(g) is referring to optional cooperative agreements with Medicaid programs under section 1912(a)(1) of the Act, for which no FFP under the IV–D program is available. The reference in § 304.23(g) to §§ 303.30 and 303.31 is no longer accurate because former §§ 303.30 and 303.31, governing optional cooperative agreements with Medicaid agencies to provide services not mandated under title IV–D of the Act or IV–D program regulations, were eliminated many years ago. Therefore, we have corrected the reference in § 304.23(g) to cross-reference cooperative agreements with Medicaid agencies under section 1912(a)(2) of the Act.

Part 305

Section 305.63—Standards for Determining Substantial Compliance With IV–D Requirements

1. *Comment:* A commenter asked if, in an interstate case, § 303.7(c)(7)(iii) and State option, under section 452(f) of the Act, to enforce health insurance orders against custodial parents, means that, if a responding State opts as its intrastate policy not to enforce orders for health insurance against custodial parents, that it need not enforce such an order if requested to by an initiating State that has opted to enforce such an order?

Response: The answer is yes: if a responding State does not opt to enforce medical support orders against a custodial parent, that State is not required to do so in interstate cases, in accordance with the introductory phrase in § 303.7(c)(iii), under which, the ''IV–D agency must provide any necessary services as it would in intrastate IV–D cases * * *'' However, in considering this comment, we realized that a conforming change is necessary to include reference to § 303.32, after § 303.31 in § 303.7(c)(7)(iii) when referring to processing and enforcing orders referred by another State. We have made that conforming change to cross-reference § 303.32 in this final rule.

2. *Comment:* A commenter requested that we delay paying incentives and imposing penalties on medical support audit requirements for as long as possible because of the frequent change in obligated parents' employment and employers' health insurance carriers, as well as the fact that the whole issue of medical support is very time consuming and frustrating.

Response: There is currently no legislative authority to pay incentives for medical support performance under the IV–D program, although States do benefit from cash medical support collections with respect to earning incentives. In addition, while the Federal government has authority, under 45 CFR Part 305 to conduct audits and impose penalties if appropriate for

a State's failure to meet Federal IV–D requirements, in accordance with § 305.60(c)(2), such discretionary audits would only be conducted under specific circumstances. Audits to determine substantial compliance would be initiated based on substantiated evidence of a failure by the State to meet IV–D requirements. Evidence, which could warrant a substantial compliance audit, includes: ''(i) The results of two or more State self-reviews conducted under section 454(15)(A) of the Act [and 45 CFR Part 308] which: Show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or (ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of noncompliance over time.''

In FY 2004, OCSE and State partners developed two possible performance measures addressing medical support. While not currently subject to incentives or penalty, lines on the OCSE–157 that will be used for the proposed medical support establishment measure and the medical support enforcement measure will be subject to FY 2006 data reliability audits. Medical support audit related findings are for management purposes only.

Part 308

Section 308.2—Required Program Compliance Criteria Paperwork Reduction Act

1. *Comment:* The proposal requires that for the purposes of the annual self-assessment audit and report, States must have in place and use procedures that ensure that the issuance of the NMSN meets a 75 percent compliance rate. The commenter asked whether cases involving coverage provided through the Defense Manpower Data Center (DMDC) should not be included in the audit sample, since PIQ–06–02 instructs IV–D agencies to ''not send the NMSN to the DMDC for dependants of active duty and retired military personnel?''

Response: That is correct.

2. *Comment:* A commenter asked whether, under proposed § 308.2(e)(4), the NMSN is only necessary if the agency knows that '' * * * the new employer provides health care coverage.'' Is knowledge of the employer's benefits really necessary or is the State required to issue the NMSN if it doesn't know the employer's benefit package? Another commenter suggested the following changes to proposed paragraph (e)(4):

''Determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § *303.32* of this chapter *where appropriate,* to a new employer when a noncustodial parent, *or under State option a custodial parent,* was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.'' The commenter indicated that this language would correct a cite (in the NPRM, the cite, § 302.32, was incorrect), bring in the ''where appropriate'' language from § 303.32, and reflect the State option to enforce medical support against a custodial parent.

Response: In response to the first commenter, under § 303.32(c)(2), the State agency must send the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV–D case in the State Directory of New Hires. There is no exception provided if the State does not know the employer's benefit package. To reflect this clarification and because we agree with the proposed revision to proposed § 308.2(e)(4) (renumbered § 308.2(e)(3)) to reflect the State's option to enforce an order requiring the custodial parent to provide health insurance coverage, renumbered § 308.2(e)(3) is revised to read: ''Determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § 303.32 of this chapter where appropriate, to a new employer when a noncustodial parent, or under State option a custodial parent, was ordered to provide health insurance coverage and changed employment.''

3. *Comment:* Two commenters asked if proposed § 308.2(e)(2) requires a State to determine the State has issued an NMSN to enforce an order to provide health coverage against the custodial person.

Response: If the State opts to enforce orders requiring custodial parents to secure health insurance coverage for their children, the State must determine if the State issued a NMSN to enforce the order.

4. *Comment:* A commenter requested that the words ''and accessible'' be stricken from proposed § 308.2(e)(2) because there is no way a State could evaluate ''accessibility'' of health insurance and still meet the two-day time requirement to send the NMSN to an employer in § 303.32(c)(2).

Response: Section 308.2(e)(2) requires a State to: ''If reasonable in cost and accessible health insurance was available and required in the order, but not obtained, determine whether the National Medical Support Notice was used to enforce the order in accordance with requirements of § 303.32 of this chapter.'' That requirement only requires a State, if the support order requires reasonable in cost and accessible health insurance, and the health insurance was not obtained, to determine if the order was enforced by sending the NMSN. It does not require a State to look behind the support order or to determine if health insurance was in fact accessible at the time an order was entered.

5. *Comment:* A commenter asked whether, with respect to proof of issuance of the NMSN for either § 303.8(e)(2) and proposed (4), the recordation of issuance and information obtained as provided on the State's automated system is sufficient or must the State be able to also provide a copy of the NMSN as proof? The commenter's State has issued more than half a million NMSNs and would appreciate Federal guidance as to the retention of the documents. The commenter prefers that a State not be required to retain a copy of each NMSN as long as the State's automated system reflects the issuance of the NMSN to the employer and includes any information obtained from the NMSN's response from the employer.

Response: We agree that no further documentation than that suggested would be required for purposes of a self-assessment under § 303.8(e)(2) and proposed (e)(4) which has been renumbered as paragraph (e)(3).

General Comments

1. *Comment:* A number of commenters were concerned about the major impact of the final regulations on the IV–D program's operation and systems. One commenter requested at least two years after publication of the final rule and enactment of any required State law change to implement the new requirements. Another commenter recommended that States be given sufficient lead time to implement these new regulatory requirements especially since some of the requirements may require the enactment or amendment of State laws, regulations, or procedures including modifications to the State's automated system. And finally, a commenter referred to preamble language in the proposed regulations that indicated that ''States will be required to submit an amended page providing assurances that laws and procedures require inclusion of medical support provisions in new and modified

orders.'' The commenter pointed out that the proposed regulations do not mention the grace period provided by section 7311 of the DRA of 2005, *Exception to General Effective Date for State Plans Requiring State Law Amendments*, that indicates that if a change in law is needed, States will have an extended period in which to secure legislative changes through the State General Assembly.

Response: The commenter is correct that section 7311 of the DRA of 2005 includes an exception to the general effective date. However, this NPRM was published in September of 2006; seven months after the passage of the DRA of 2005. By the time this final regulation is published, the effective delay date for this provision will have passed. We have consistently said that States will not be penalized for implementation of the DRA provisions based on their best interpretation of the statute. As indicated in the preamble, this regulation is effective upon publication.

2. *Comment:* Several commenters indicated that these regulations will result in increased expenditures of more than $100 million per year. One State commenter indicated that the State anticipates substantial expenditures to fully implement the requirements of the regulations. That commenter indicated that there will be numerous system changes, to both the Child Support and Medicaid automated systems, in order to modify guidelines calculations, account for cash medical support payments, and effectuate an accurate means of advising Medicaid of cash medical support payments. The commenter assumes that similar costs will be incurred in each State and Territory in the Nation, which could exceed $100 million nationally as implementation occurs. The same commenter who was concerned about the impact of the new requirements to consider health insurance available to either parent indicated that meeting the requirements will require considerable legislative changes, policy changes and automated systems changes, as well as a significant human resource issue.

Response: As indicated in the section of the preamble addressing section 202 of the Unfunded Mandates Reform Act, that Act requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may 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. The Department has determined that these proposed regulations would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Many of the requirements in this final rule are not new, including child support guidelines that provide for the child(ren)'s health care needs, through health insurance coverage or other means; providing information, and forwarding assigned cash medical support, to the Medicaid agency; petitioning to include health insurance available to noncustodial parents in support orders; and establishing criteria to determine when to modify an order to include health insurance and seeking modification of the order if the appropriate criteria are met. States have been required to meet certain medical support requirements in Federal regulations for as long as 20 years and to use the NMSN to enforce orders since 2000.

States also are authorized to include, and many already do include, a cash medical support obligation, whether or not health insurance is ordered. This practice has increased over the years as reasonable-cost health insurance became less and less available. According to the Working Group's Report, about half of the States already consider health insurance available to either parent in seeking a medical support obligation. Additions to State case closure authority in § 303.11, as well as elimination of a number of requirements under previous and the proposed medical support regulation, will reduce the burden and cost on State Child Support Enforcement programs. And, finally, only one State that uses percentage-based child support guidelines raised the issue of securing financial information from custodial parents, despite the fact that, according to two reports identifying how many States employ each model guidelines for determining child support, *Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers and Children of 2002,* and *Evaluation of Child Support Guidelines* (1994), approximately 15 States base their child support guidelines on the Percentage-of-Income Model. Therefore, most States will not face large costs to meet the Federal requirements.

3. *Comment:* Several commenters supported a centralized search of health insurance databases to locate coverage. One commenter indicated that the centralized approach has worked quite well with the DMDC matches and believes that centralization of this function is far more efficient than each State conducting an individual match.

Response: Federal legislation would be required to allow a match with health insurance databases.

4. *Comment:* A commenter states that HIPAA (The Health Insurance Portability and Accountability Act) has made it difficult to gain cooperation for insurance companies to obtain sufficient details and information to enable State Child Support Enforcement agencies to enforce medical and dental insurance orders and requested that the Federal government do more education with employer and insurance markets.

Response: OCSE has an Employer Liaison group that provides extensive technical assistance to, and education of employers. This unit also deals with health insurance issues raised by employers and employer groups. OCSE has issued policy guidance to States that permits a covered entity to disclose protected health information to a ''law enforcement official'' for law enforcement purposes in compliance with court orders, grand jury subpoenas, or certain written administrative requests. An employee of a IV–D agency who is acting, in accordance with State or Federal law, to enforce a medical child support order meets the definition of a law enforcement official. The National Medical Support Notice which is sent by the IV–D agency to the employer and health plan administrator for completion would constitute a written administrative request by a law enforcement official (see PIQ–04–03 at *http://www.acf.hhs.gov/programs/cse/pol/PIQ/2004/piq-04-03.htm*). Additional assistance will be provided as appropriate and requested in the future.

5. *Comment:* The proposed regulations use the terms ''must'' and ''shall'' to describe a mandatory condition. Is there a distinction between the two terms, or are they to be considered interchangeable?

Response: The terms ''must'' and ''shall'' are considered interchangeable when used in Federal child support regulations and guidance.

6. *Comment:* A commenter suggested that there should be a national conference for child support enforcement personnel within a year after the implementation of these policies. This would allow the workers to discuss some issues faced as well as successful strategies for implementation. This would prove invaluable to the workers responsible for enforcing these provisions, ultimately ensuring a smooth transition to implementing the proposed amendments.

Response: There are multiple, existing opportunities every year for child

support workers to discuss medical support issues, including those raised by Federal regulations. In addition to State and OCSE Regional child support meetings and conferences, there are large annual training conferences held by the National Child Support Enforcement Association, Eastern Regional Interstate Child Support Association, and Western Interstate Child Support Enforcement Council.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these reporting requirements as described below. This Final rule contains changes to reporting requirements in Part 308, which the Department has submitted to OMB for its review.

Section 308.1(e) contains a requirement that a State report the results of annual self-assessment reviews to the appropriate OCSE Regional Office and to the Commissioner of OCSE. The information submitted must be sufficient to measure State compliance with Federal requirements for expedited procedures and to determine whether the program is in compliance with title IV–D requirements and case processing timeframes. The results of the report will be disseminated via ''best practices'' to other States and also be used to determine whether technical assistance is needed. The preprint page for this requirement (page 2.15, State Self-assessment and Report) was approved by OMB on January 18, 2001, under OMB Number 0970–0223, and periodically as required thereafter.

The revisions to § 308.2(e), which address securing and enforcing medical support, will slightly reduce the paperwork burden on States, by eliminating three information collection and reporting requirements because, under these final regulations, medical support will be included in all new and modified support orders, but the reduced paperwork burden would be negligible.

Respondents: State child support enforcement agencies in the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

This information collection requirement will impose the estimated total annual burden on the agencies described in the table below:

Information collection	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Section 308.1	54/1	3,866	208,764

The Administration for Children and Families (ACF) will consider comments by the public on the information collection in order to evaluate the accuracy of ACF's estimate of the burden of the collection of information. Comments by the public on this collection of information will be considered in the following areas:

Evaluating the accuracy of the ACF estimate of the burden of the collection[s] of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for the Administration for Children and Families.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. These rules provide solutions to problems in securing private health care coverage for children who live apart from one or both of their parents and the Department has determined that they are consistent with the priorities and principles set forth in the Executive Order.

These regulations implement section 7307 of the Deficit Reduction Act of 2005, the requirement that States consider medical support available to either parent in establishing a medical support obligation, and to enforce medical support at their option when the obligated parent is the custodial parent. They also address certain recommendations of the Medical Child Support Working Group, which included public deliberation, and additional input from State and local IV–D administrators and other child support enforcement stakeholders.

These rules do not introduce new requirements for including medical support in child support orders, a long-standing program requirement, but rather broaden States' options for addressing the availability and accessibility of health care coverage. For example, by focusing on health insurance coverage available to either parent, these rules recognize that untapped employer-sponsored insurance through custodial mothers and their spouses might reduce the share of children without private health insurance. An HHS study, Health Care Coverage Among Child Support-Eligible Children, 2002, found that half of child support-eligible children living with their mother are currently covered by employer-sponsored insurance.

These regulations are significant under section 3(f) of the Executive Order because they raise novel policy issues and therefore have been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may 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. The Department has determined that these regulations would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

These proposed regulations are not a major rule as defined in 5 U.S.C., chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. These regulations will have a positive impact on family well-being as defined in the legislation, by providing greater access to health care coverage.

Executive Order 13132

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government.'' These regulations do not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

45 CFR Part 308

Auditing, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: September 6, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: March 28, 2008.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on July 8, 2008.

■ For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 302—STATE PLAN REQUIREMENTS

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

■ 2. In § 302.56 revise paragraph (c)(3) to read as follows:

§ 302.56 Guidelines for setting child support awards.

* * * * *

(c) * * *

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31 of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 3. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

§ 303.7 [Amended]

■ 4. Amend § 303.7 by inserting in paragraph (c)(7)(iii) ''§ 303.32,'' after ''303.31,''.

§ 303.11 [Amended]

■ 5. Section 303.11 is amended by:

■ a. Amending paragraph (b)(10) by inserting ''or under § 302.33(a)(1)(ii) when cooperation with the IV–D agency is not required of the recipient of services,'' after ''§ 302.33(a)(1)(i) or (iii),''.

■ b. Amending paragraph (b)(11) by inserting ''or under § 302.33(a)(1)(ii) when cooperation with the IV–D agency is not required of the recipient of services,'' after ''§ 302.33(a)(1)(i) or (iii),''.

■ 6. Revise § 303.31 to read as follows:

§ 303.31 Securing and enforcing medical support obligations.

(a) For purposes of this section:

(1) Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage which is available to either parent, under which medical services could be provided to the dependent child(ren).

(3) Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter. In applying the five percent or alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self-only and family coverage.

(b) The State IV–D agency must:

(1) Petition the court or administrative authority to include private health insurance that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support;

(2) If private health insurance described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health insurance, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance coverage.

(3) Establish written criteria to identify orders that do not address the health care needs of children based on—

(i) Evidence that private health insurance may be available to either parent at reasonable cost, as defined under paragraph (a)(3) of this section; and

(ii) Facts, as defined by State law, regulation, procedure, or other directive,

and review and adjustment requirements under § 303.8(d) of this part, which are sufficient to warrant modification of the existing support order to address the health care needs of children in accordance with paragraph (b)(1) of this section.

(4) Petition the court or administrative authority to modify support orders, in accordance with State child support guidelines, for cases identified in paragraph (b)(3) of this section to include private health insurance and/or cash medical support in accordance with paragraphs (b)(1) and (b)(2) of this section.

(5) Periodically communicate with the Medicaid agency to determine whether there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(c) The IV–D agency shall inform an individual who is eligible for services under § 302.33 of this chapter that medical support services will be provided and shall provide the services specified in paragraph (b) of this section.

§ 303.32 [Amended]

■ 7. Amend § 303.32 by inserting in paragraph (a) the words ''and, at State option, custodial parents'', after the words ''noncustodial parents'' and by inserting in paragraph (c)(6) the words ''and, at State option, custodial parent's'' after the words ''noncustodial parent's.''

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 8. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

§ 304.20 [Amended]

■ 9. Amend § 304.20(b)(11) by removing ''§§ 303.30 and 303.31'' and adding ''§§ 303.30, 303.31, and 303.32'' in its place.

§ 304.23 [Amended]

■ 10. Amend § 304.23(g) by removing ''§§ 303.30 and 303.31 of this chapter'' and adding ''section 1912(a)(2) of the Act''.

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 11. The authority citation for part 305 is revised to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

§ 305.63 [Amended]

■ 11a. Amend § 305.63(c)(5) by adding ''and § 302.32'' after ''under § 303.31''.

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

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

Authority: 42 U.S.C. 654(15)(A) and 1302.

§ 308.2 [Amended]

■ 13. In § 308.2 revise paragraph (e) to read as follows:

§ 308.2 Required program compliance criteria.

* * * * *

(e) Securing and enforcing medical support orders. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether support orders established or modified during the review period include medical support in accordance with § 303.31(b) of this chapter.

(2) If reasonable in cost and accessible private health insurance was available and required in the order, but not obtained, determine whether the National Medical Support Notice was used to enforce the order in accordance with requirements in § 303.32 of this chapter.

(3) Determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § 303.32 of this chapter, to a new employer when a noncustodial parent, or at State option a custodial parent, was ordered to provide health insurance coverage and changed employment.

* * * * *

[FR Doc. E8–15771 Filed 7–18–08; 8:45 am]

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Federal Register

Monday,
July 21, 2008

Part III

Department of Transportation

Federal Aviation Administration
14 CFR Parts 25, 26, 121 et al.
Reduction of Fuel Tank Flammability in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 26, 121, 125, and 129

[Docket No. FAA–2005–22997; Amendment Nos. 25–125, 26–2, 121–340, 125–55, and 129–46]

RIN 2120–AI23

Reduction of Fuel Tank Flammability in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This final rule amends FAA regulations that require operators and manufacturers of transport category airplanes to take steps that, in combination with other required actions, should greatly reduce the chances of a catastrophic fuel tank explosion. The final rule does not direct the adoption of specific inerting technology either by manufacturers or operators, but establishes a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or require the installation of an ignition mitigation means in an affected fuel tank. Technology now provides a variety of commercially feasible methods to accomplish these vital safety objectives.

DATES: These amendments become September 19, 2008. Send your comments by January 20, 2009. The incorporation by reference of the document listed in the rule is approved by the Director of the Federal Register as of September 19, 2008.

FOR FURTHER INFORMATION CONTACT: If you have technical questions about this action, contact Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: *mike.dostert@faa.gov*. Direct any legal questions to Doug Anderson, ANM–7, FAA, Office of Regional Counsel, 1601 Lind Avenue, SW, Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007, e-mail *Douglas.Anderson@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the ADDITIONAL INFORMATION section, we discuss how you can comment on a certain portion of this final rule and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this final rule and related rulemaking documents.

Authority for Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of aviation safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes

- New safety standards for the design of transport category airplanes, and
- New requirements necessary for safety for the design, production, operation and maintenance of those airplanes, and for other practices, methods, and procedures related to those airplanes.

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I. Executive Summary

A. Statement of the Problem

Fuel tank explosions have been a constant threat with serious aviation safety implications for many years. Since 1960, 18 airplanes have been damaged or destroyed as the result of a fuel tank explosion. Two of the more recent explosions—one involving a Boeing 747 (Trans World Airways (TWA) Flight 800) off Long Island, New York in 1996 and the other, a Boeing 727 terrorist-initiated explosion (Avianca Flight 203) in Bogotá, Columbia in 1989 [1]—occurred during flight and led to catastrophic losses (including the deaths of 337 individuals). Two other recent explosions on airplanes operated by Philippine Airlines and Thai Airlines occurred on the ground (resulting in nine fatalities).[2] While the accident investigations of the TWA, Philippine Airlines and Thai Airlines accidents failed to identify the ignition source that caused the explosion, the investigations found several similarities. In each instance:

1. The weather was warm, with an outside air temperature over 80 °F;

2. The explosion occurred on the ground or soon after takeoff; and

3. The explosion involved empty or nearly empty tanks that contained residual fuel from the previous fueling.

Additionally, investigators were able to conclude that the center wing fuel tank in all three airplanes contained flammable vapors in the ullage (that portion of the fuel tank not occupied by liquid fuel) when the fuel tanks exploded. This was also the case with the Avianca airplane.

A system designed to reduce the likelihood of a fuel tank fire, or mitigate the effects of a fire should one occur, would have prevented these four fuel tank explosions.

A statistical evaluation of these accidents has led the FAA to project that, unless remedial measures are taken, four more United States (U.S.) registered transport category airplanes will likely be destroyed by a fuel tank explosion in the next 35 years. Although we cannot forecast precisely when these accidents will occur, computer modeling that has been an accurate predictor in the past indicates these events are virtually certain to occur. We believe at least three of these explosions are preventable by the adoption of a comprehensive safety regime to reduce both the incidence of ignition sources developing and the likelihood of the fuel tank containing flammable fuel vapors.

B. Reducing the Chance of Ignition

To address the first part of this comprehensive safety regime, we have taken several steps to reduce the chances of ignition. Since 1996, we have imposed numerous airworthiness requirements (including airworthiness directives or ''ADs'') directed at the elimination of fuel tank ignition sources. Special Federal Aviation Regulation No. 88 of 14 Code of Federal Regulations (CFR) part 21 (SFAR 88; 66 FR 23086, May 7, 2001) requires the detection and correction of potential system failures that can cause ignition. Although these measures should prevent some of the four forecast explosions, our review of the current transport category airplane designs of all major manufacturers has shown that unanticipated failures and maintenance errors will continue to generate unexpected ignition sources. Since manufacturers completed their SFAR 88 ignition prevention reviews, we have had reports of potential ignition sources (including unsafe conditions) that were not identified in the SFAR 88 reviews. For example:

- We issued AD 2006–06–14 to require the inspection of fuel quantity indicating probes within the fuel tanks of Airbus A320 airplanes to prevent an ignition source due to sparks that could be created following a lightning strike. This failure mode was not identified as a possible ignition source in the SFAR 88 analysis presented to the FAA.
- We issued AD 2006–12–02 following a report of an improperly installed screw inside the fuel pump housings of A320 airplanes that could loosen and fall into the pump's electrical windings. This could create a spark and ignite fuel vapors in the pump. The ignited vapors could then exit the fuel pump housing, enter the fuel tank through the hole created when the screw fell out of the housing, and cause a fuel tank explosion. This failure mode was not identified as a possible ignition source in the SFAR 88 analysis presented to the FAA.
- We received an in-service report on a Boeing 777 that was operated for over 30 days with an open vent hole between the center wing fuel tank and the wheel well of the airplane. During maintenance, a vent hole cover used to facilitate venting of the tank was inadvertently left off. This was not discovered until a flight occurred where the tank was fueled to a level where the fuel spilled from the tank into the wheel well during pitching up of the airplane for takeoff. Since the airplane brakes routinely exceed temperatures that could ignite fuel vapors and the wheels are retracted into the wheel well, the open vent port could have allowed ignition of fuel vapors in the center tank and a fuel tank explosion. This type of maintenance error was also not identified as providing a possible ignition source during the SFAR 88 safety reviews.
- On May 5, 2006, an explosion occurred in the wing fuel tank of a Boeing 727 in Bangalore, India, while the airplane was on the ground. This event occurred after a modification to include special Teflon sleeving and recurring inspections had been implemented to prevent possible arcing of the fuel pump wires to metallic conduits located in the fuel tank. Initial information indicates that the identified

[1] Although it was determined that a terrorist's bomb had caused the explosion of the center tank in the Bogotá accident, the NTSB determined the ''bomb explosion did not compromise the structural integrity of the airplane; however, the explosion punctured the [center wing tank] and ignited the fuel-air vapors in the ullage, resulting in destruction of the airplane.''

[2] Philippine Airlines Boeing 737 accidnet in Manila in 1990, and a Thai Airlines Boeing 737 accident in Bangkok in 2001.

AD action was inadequate to prevent the formation of an ignition source in the fuel tank and that the change intended to improve safety caused premature wear of the sleeving and an unsafe condition. Premature wear of Teflon sleeving on the Boeing 737 has also been reported, resulting in AD action to modify the design and replace the existing sleeving. This failure mode was not identified as a possible ignition source in the SFAR 88 analysis presented to the FAA.

• We also received a report that during a recent certification program test, an ignition source developed in the fuel pumps causing pump failure. These pumps had been designed to meet the most stringent requirements of SFAR 88 and Amendment 25–102 to 14 CFR 25.981 (issued concurrently with SFAR 88), yet the pump failed in a manner that allowed a capacitor to arc to the pump enclosure and create an ignition source. The applicant has since conducted a design review that has resulted in numerous modifications to the pump's design.

• Following the TWA 800 accident, the risk of uncontrolled fire adjacent to the fuel tanks causing a fuel tank explosion was identified as an unsafe condition. In 2006, we issued a MD–80 AD (AD 2006–15–15) to prevent worn insulation on wires from arcing at the auxiliary hydraulic pump, which could result in a fire in the wheel well of the airplane. The AD required inspections to validate the pump wire integrity as well as incorporating sleeving on portions of the wires. In April 2008, we received reports of improper means of compliance being used regarding the requirements of AD 2006–15–15. Human error in completing the procedures required by the AD resulted in airplanes being operated without the needed safety improvements.

Based on the above examples, we have concluded that we are unlikely to identify and eradicate all possible sources of ignition.

C. Reducing the Likelihood of an Explosion After Ignition

To ensure safety, therefore, we must also focus on the environment that permits combustion to occur in the first place. Many transport category airplanes are designed with heated center wing tanks in which the fuel vapors are flammable for significant portions of their operating time. This final rule addresses the risk of a fuel tank explosion by reducing the likelihood that fuel tank vapors will explode when an ignition source is introduced into the tank.

Technology now exists that can prevent ignition of flammable fuel vapors by reducing their oxygen concentration below the level that will support combustion. By making the vapors ''inert,'' we can significantly reduce the likelihood of an explosion when a fire source is introduced to the fuel tank. FAA-developed prototype onboard fuel tank inerting systems have been successfully flight tested on Airbus A320 and Boeing 747 and 737 airplanes. We have also approved inerting systems for the Boeing 747 and 737 airplanes, and two airplanes of each model type have performed as expected during airline in-service evaluations. Boeing plans to install these systems on all new production airplanes.

Given that ignition sources will develop, the chances of a fuel tank explosion naturally correlate with the exposure of the tank to flammable vapors. The requirements in this final rule mitigate the effects of such flammability exposure and limit it to acceptable levels by mandating the installation of either a Flammability Reduction Means (FRM) or an Ignition Mitigation Means (IMM).[3] In either case, the technology has to adhere to performance and reliability standards that are set by us and contained in Appendices M and N to Title 14 Code of Federal Regulations (CFR) part 25.

This final rule amends the existing airworthiness standards contained in 14 CFR 25.981 to require all future type certificate (TC) applicants for transport category airplanes to reduce fuel tank flammability exposure to acceptable levels. It also amends 14 CFR part 26 ''Continued Airworthiness and Safety Improvements''[4] to require TC holders to develop FRM or IMM for many large turbine-powered transport category airplanes with high-risk fuel tanks. Finally, it amends 14 CFR parts 121, 125 and 129 to require operators of these airplanes to incorporate the approved FRM or IMM into the fleet and to keep them operational. We estimate that approximately 2,700 existing Airbus and Boeing airplanes operating in the United States as well as about 2,300 newly manufactured airplanes that enter U.S. airline passenger service will be affected. Fuel tank system designs in several pending type-certification applications, including the Boeing 787[5] and Airbus A350, also have to meet these requirements.

We acknowledge that these requirements are costly and have adopted these steps only after spending several years researching the most cost-effective ways to prevent fuel tank explosions in cooperation with engineers and other experts from the affected industry. Those efforts have resulted in the development of fuel-inerting technology that is vastly cheaper than originally thought.

In contrast, the loss of a single, fully loaded large passenger airplane in flight, such as a Boeing 747 or Airbus A380, would result in death and destruction causing societal loss of at least $1.2 billion (based on costs of prior calamities). We estimate that compliance with this new rule will prevent between one and two accidents of some type (for analytical purposes we assume the accidents would involve ''average'' airplanes with ''average'' passenger loads) over 35 years.[6] In addition to the direct costs of such an accident, we now recognize that, in the post-9/11 aviation environment, the public could initially assume that an in-flight fuel tank explosion is the result of terrorist actions. This could cause a substantial immediate disruption of flights, similar to what occurred in Britain on August 10, 2006, due to the discovery of a terrorist plot.[7] This could have an immediate and substantial adverse economic effect on the aviation industry as a whole.

The FAA's safety philosophy is to address aviation safety threats whenever practicable solutions are found, especially when dealing with intractable and catastrophic risks like fuel tank explosions that are virtually certain to

[3] FRM consist of systems or features installed to reduce or control fuel tank flammability to acceptable levels. IMM is based upon mitigating the effects of a fuel vapor ignition in a fuel tank so that an explosion does not occur. Polyurethane foam installed in a fuel tank is one form of an IMM. See AC 25.981–2 for additional information.

[4] Part 26 was added to the Code of Federal Regulations to include all requirements for Continued Operational Safety. See Docket number FAA–2004–18379 for more information on this subject.

[5] This airplane model already includes a FRM in its design that the applicant intends to show will meet today's final rule, so no additional modifications will be required.

[6] Although Boeing has committed to installing compliant FRM in all future production airplanes, regardless of this rule, operators could deactivate the systems unless this rulemaking is adopted. The final regulatory evaluation includes the costs and benefits of these actions for newly produced Boeing and Airbus airplanes.

[7] Flight schedules in Britain were significantly disrupted due to flight cancellation of all flights into Heathrow Airport and 30 percent of all short-haul flights out of Heathrow Airport for one day (according to Secretary of State for Transport Douglas Alexander). The day after the event, the crowds and lines that log-jammed British airports the day before were largely gone, he said. British Airways stated that it cancelled 1,280 flights between August 10–17 due to the discovery of the terror plot and subsequent security measures. EasyJet said it was forced to cancel 469 flights because of the disruption caused by the terror alert. Ryanair said it cancelled a total of 265 flights.

occur. Thus, now that solutions are reasonably cost effective, we have determined that it is necessary for safety and in the public's best interest to adopt these requirements.

II. Background

A. Summary of the NPRM

On November 23, 2005, the FAA published in the **Federal Register** the Notice of Proposed Rulemaking (NPRM) entitled ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' (70 FR 70922). This NPRM is the basis for this final rule.

In the NPRM, we proposed steps to be taken by manufacturers and operators of transport category airplanes to significantly reduce the chances of a catastrophic fuel tank explosion. The proposal followed seven years of intensive research by the FAA and industry into technologies designed to make fuel tanks effectively inert. Inerting reduces the amount of oxygen in the fuel tank vapor space so that combustion cannot take place if there is an ignition source. Although the NPRM did not specifically direct the adoption of inerting technology, it did propose a performance-based set of requirements for reducing fuel tank flammability to an acceptably safe level.

We proposed regulatory changes to require manufacturers and operators to reduce the average fuel tank flammability exposure in affected fleets. The main premise of the proposal was that a balanced approach to fuel tank safety was needed that provides both prevention of ignition sources and reduction of flammability of the fuel tanks. While the focus of the NPRM was on airplanes used in passenger operations, we requested comments on whether the new requirements should also be applied to all-cargo airplanes.

We also proposed changes to expand the coverage of part 25 by making manufacturers generally responsible for the development of service information and safety improvements (including design changes) where needed to ensure the continued airworthiness of previously certificated airplanes. This change was proposed to ensure that operators would be able to obtain service instructions for making necessary safety improvements in a timely manner.

As to fuel tank flammability specifically, we proposed to require manufacturers, including holders of certain airplane TCs and of auxiliary fuel tank supplemental type certificates (STCs), to conduct a flammability exposure analysis of their fuel tanks. We proposed a new Appendix L (now Appendix N) to part 25 that provides a method for calculating overall and warm day fuel tank flammability exposure. Where the required analyses indicated that the fuel tank has an average flammability exposure below 7 percent, we anticipate no changes would be required. However, for the other fuel tanks, manufacturers would be required to develop design modifications to support a retrofit of the airplane fuel tanks. Under the NPRM, the average flammability exposure of any affected wing tank would have to be reduced to no more than 7 percent. In addition, for any normally emptied fuel tank (including auxiliary fuel tanks) located in whole or in part in the fuselage, flammability exposure was to be reduced to 3 percent, both for the overall fleet average and for operations on warm days.

We also proposed to set more stringent safety levels for certain critically located fuel tanks in most new type designs, while maintaining the current, general standard under § 25.981 for all other fuel tanks. The expectation was that the design of most normally emptied and auxiliary tanks located in whole or in part in the fuselage of transport category airplanes would need to incorporate some form of FRM or IMM.

In Appendix M to part 25, we proposed to adopt detailed specifications for all FRM, if they were used to meet the flammability exposure limitations. These additional requirements were designed to ensure the effectiveness and reliability of FRM, mandate reporting of performance metrics, and provide warnings of possible hazards in and around fuel tanks.

We also proposed that TC holders for specific airplane models with high flammability exposure fuel tanks be required to develop design changes and service instructions to facilitate operators' installation of IMM or FRM. Manufacturers of these airplanes would also have to incorporate these design changes in airplanes produced in the future. In addition, design approval holders (TC and STC holders) and applicants would have to develop airworthiness limitations to ensure that maintenance actions and future modifications do not increase flammability exposure above the limits specified in the proposal. These design approval holders would have to submit binding compliance plans by a specified date, and these plans would be closely monitored by the design approval holders' FAA Oversight Offices to ensure timely compliance.

Lastly, the proposal would require affected operators to incorporate FRM or IMM for high-risk fuel tanks in their existing fleet of affected airplane models. The proposal would have applied to operators of airplanes under parts 91, 125, 121, and 129. Operators would also have to revise their maintenance and inspection programs to incorporate the airworthiness limitations developed under the NPRM. We also proposed strict retrofit deadlines, which were premised on prompt compliance by manufacturers with their compliance plans.

The NPRM contains the background and rationale for this rulemaking and, except where we have made revisions in this final rule, should be referred to for that information.

B. Related Activities

On November 28, 2005, the FAA published a Notice of Availability of Proposed Advisory Circular (AC) 25.981–2A, Fuel Tank Flammability, and request for comments in the **Federal Register** (70 FR 71365). The notice announced the availability of a proposed AC that would set forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness standards set forth in the NPRM. On March 21, 2006, the FAA published a notice that extended the comment period as a result of an extension of the NPRM's comment period to May 8, 2006 (71 FR 14281).

C. Differences Between the NPRM and the Final Rule

As a result of the comments received and our own continued review of the proposals in the NPRM, we have made several changes to the proposed regulatory text. The majority of these changes will be discussed in the ''Discussion of the Final Rule'' section below. The following is a summary of the main differences between the NPRM and this final rule.

1. *Design Approval Holders.* The design approval holder (DAH) requirements proposed in the NPRM as subpart I of part 25 are now contained in new part 26. This was done to harmonize with the regulatory structure of other international airworthiness authorities. We also revised the applicability for the retrofit requirement so the DAH requirements do not apply to airplanes manufactured before 1992. The effect of this change is that DAHs will not have to develop FRM or IMM for many older airplane models that do not have significant remaining useful life in passenger operations. We revised the compliance times for DAHs to

develop and make available service instructions for FRM or IMM by replacing specific compliance dates with a compliance time of 24 months after the effective date of this rule for all affected airplane models. We have also made some changes, discussed later, to the compliance planning sections of the DAH requirements.

2. *Auxiliary Fuel Tanks.* We have learned that few auxiliary fuel tanks installed under STCs and field approvals remain in service, and we need to obtain additional information to decide whether the risks from these tanks justify retrofit requirements. Therefore, we have removed the requirements for an FRM or IMM retrofit for these tanks.

3. *Impact Assessments.* We limited the requirement for impact assessments for auxiliary fuel tanks to airplanes with high flammability tanks for which an FRM is required (i.e., Heated Center Wing Tank airplanes).

4. *All-Cargo Airplanes.* We retained the proposal to exclude all-cargo airplanes from the requirement to retrofit high flammability tanks with FRM or IMM. However, we added a requirement that when any airplane that has an FRM or IMM is converted from passenger use to all-cargo use, these safety features must remain operational. We also added a requirement that newly manufactured all-cargo airplanes must meet the same requirements as newly manufactured passenger airplanes. We revised § 25.981 to remove the exclusion of all-cargo airplanes so that any newly certificated transport category airplane, regardless of the type of operation, must meet the same safety standards.

5. *Part 91 Operators.* The proposed rule would have applied to operators under part 91, which is limited to private use operations. However, the final rule does not include part 91 requirements.

6. *Retrofit Requirements for Operators.* We have added a provision for air carrier operators that allows a one year extension in the compliance time to retrofit of their affected fleets if they revise their operations specifications and manuals to use ground conditioned air[8] when it is available. Instead of requiring retrofit for all airplanes with high flammability fuel tanks, we revised the operating rules to prohibit operation of these airplanes in passenger service after 2016 unless an FRM or IMM is installed. This approach gives operators the option of converting these airplanes to all-cargo service. We also prohibit the operation of airplanes with high flammability fuel tanks produced after 2009 unless they are equipped with FRM or IMM. This requirement parallels the proposed production cut-in requirement, but also applies to foreign manufactured airplanes. Finally, instead of requiring retrofit of high flammability auxiliary fuel tanks, we prohibit installation of auxiliary fuel tanks after 2016 unless they comply with the new requirements of § 25.981.

[8] ''Ground conditioned air'' is temperature controlled air used to ventilate the airplane cabin while the airplane is parked between flights.

III. Discussion of the Final Rule

A. Summary of Comments

The FAA received over 100 comment letters to the proposed rule and guidance material. These letters covered a wide spectrum of topics and range of responses to the rulemaking package, which will be discussed more fully below. While there was much support for the general intent of the rule changes and the guidance material, there were several requests for changes and for clarification.

B. Necessity of Rule

1. Estimates/Conclusions Supporting Need for Rule

In the NPRM and its supporting documents, we noted several estimates and conclusions that we used to determine the necessity and content of this rule. We received comments on the following assumptions:

- The historical accident rate for heated center wing tank (HCWT) airplanes is 1 accident per 60 million hours of flight (before implementing corrective actions following TWA 800).
- That SFAR 88 and other corrective actions would prevent 50 percent of future fuel tank explosions.
- That Boeing and Airbus airplanes have an equal risk of an explosion.
- That a HCWT, depending upon the airplane model and its mode of operation, is explosive 12 to 24 percent of the time.
- That the rate of accidents directly correlates to flammability exposure.

Based on the comments received, we have changed the historical accident rate estimate to 1 accident per 100 million hours. This change does not affect our conclusion that the historical accident rate for HCWT airplanes supports the need for this rule. As for the other estimates and conclusions, we have not changed these in the final rule.

a. Historical (pre-TWA 800) Accident Rate

Airbus, the Air Transport Association (ATA), Alaska Airlines (Alaska), the Association of Asia Pacific Airlines (AAPA), the Association of European Airlines (AEA), Boeing, Cathay Pacific Airways (Cathay), Delta Air Lines (Delta) and FedEx stated that the historical accident rate of 1 accident every 60 million fleet operating hours was too high. Most of these commenters recommended a rate of 1 accident per 140 million hours. Their proposed rate is based on the number of accidents and the total fleet hours for heated center wing tank (HCWT) airplanes through 2005 (3 accidents over 430 million hours). Several of these commenters also noted that this rate is closer to the conservative estimate in the MITRE Corporation's assessment of the FAA's accident prediction/avoidance model (1 accident every 160 million hours).[9]

Boeing proposed a rate of 1 accident every 100 million hours. Boeing's analysis also started with the number of accidents and the total fleet hours for HCWT airplanes through 2005. However, Boeing recognized that some of the improvement since 2001 may be attributable to the FAA/industry focus on ignition prevention and concluded that the rate of 1 accident every 100 million hours more accurately represents the pre-TWA 800 rate.

FedEx stated that, from a historical basis, 140 million hours would be a correct mean time between accidents. However, FedEx noted that a more conservative estimate closer to 100 million hours would still be acceptable.

In a related comment, ATA questioned our use of flight hours as the measure of exposure to risk. ATA noted that two of the historical accidents did not occur in flight. Therefore, flight hours may understate exposure and overstate risk. ATA concluded that these accidents support the use of block hours or some other measure that accounts for time on the ground (and would lower the accident rate by about 16 percent).

We agree that the accident rate used in the NPRM was too high and needs adjustment. While the rate of 1 accident every 140 million hours is correct if you only use the total fleet hours for HCWT airplanes through 2005, it fails to consider the beneficial effects of FAA/industry action following the TWA 800 accident. Since that accident, we have issued many ADs to address specific findings of unsafe conditions that could produce fuel tank ignition sources. In addition, the Fuel Tank Safety Rule, of which SFAR 88 was a part, was issued in 2001 to establish a systematic process for identifying and eliminating ignition

[9] The Mitre assessment of the FAA accident prediction methodology is included as Appendix H of the Initial Regulatory Evaluation and is available in the docket for this rulemaking (Document Number FAA–2005–22997–3).

sources. Many of the improvements resulting from these actions have been implemented in the transport airplane fleet, and the improved safety record since TWA 800 is largely attributable to them. While the commenters acknowledge that these actions have been effective at preventing future accidents, most of them failed to reduce their proposed historical rate accordingly to address these benefits. In contrast, Boeing's recommended rate considers the benefits of these actions (which we calculate covers about 170 million hours).

We believe that an accident rate of 1 per 100 million hours is an accurate calculation of the historical accident rate before implementation of post-TWA 800 ignition prevention actions. Therefore, we used this rate in developing this final rule and its supporting documents. However, this change does not affect our conclusion that the historical accident rate for HCWT airplanes supports the need for this rule. We continue to believe that the risk of an accident is too high.

Several commenters referred to the rate in the MITRE Corporation's report (1 accident every 160 million hours). This rate includes operations of airplanes without HCWT. Recommendations resulting from MITRE's review included a suggestion that only fleet hours from airplanes with HCWT be used in the accident prediction model. We agreed with this recommendation and have adjusted the accident rate accordingly.

Finally, we do not agree with ATA's conclusion that the use of flight hours to predict future accidents results in an overstated risk. Both the past accident rate and the future predicted number of accidents were based upon the number of flight hours of airplanes with high flammability fuel tanks, and in both cases the number of flight hours does not include ground time. The ratio of flight time to ground time is unlikely to change significantly in the future because the average flight length and the amount of time spent on the ground before and after each flight are unlikely to change significantly. Therefore, whether past and future accident rates are stated in terms of flight time only or flight time plus ground time, the projected future accident rates would predict the same number of accidents over any given time period.

b. SFAR 88 Effectiveness Rate

In the NPRM and its supporting documents, we estimated that SFAR 88 would prevent 50 percent of future fuel tank explosions (although we also conducted a sensitivity analysis using effectiveness rates of 25 and 75 percent). ATA stated that the 50 percent effectiveness rate was without basis or explanation and recommended a rate of 90 percent. Airbus recommended an effectiveness rate in the range of 75 to 90 percent. If these higher rates are used, ATA and Airbus noted the safety benefits of the proposed rule are insufficient to justify the costs, and they requested that we withdraw the NPRM.

Predicting the effectiveness of ignition prevention actions is challenging, since many ignition sources are the result of human error, which cannot be precisely predicted or quantitatively evaluated. Despite extensive efforts by the FAA and industry to prevent ignition sources, we continue to learn of new ignition sources. Some of these ignition sources are attributable to failures on the part of engineering organizations to identify potential ignition sources and provide design changes to prevent them. Others are attributable to actions by production, maintenance, and other operational personnel, who inadvertently compromise wiring and equipment producing ignition sources. Regardless of the causes, we believe that ignition prevention actions, while necessary, are insufficient to eliminate ignition sources.

Based on the recently discovered ignition sources discussed earlier, we continue to believe that an assumed effectiveness rate of 50 percent is reasonable and appropriate. In its study on SFAR 88 effectiveness, Sandia National Laboratories concluded that our estimate of 50 percent was reasonable, and the value of 75 percent effectiveness assumed in the initial Aviation Rulemaking Advisory Committee (ARAC) report was overly optimistic. While the report of the ARAC Fuel Tank Inerting Harmonization Working Group [10] initially assumed an effectiveness of 75 percent, the report was later amended to use a range of effectiveness between 25 to 75 percent because of the uncertainty in predicting the effectiveness.

Finally, since ATA did not submit any data to substantiate that a higher effectiveness rate is more reasonable, we believe the post-SFAR 88 service experience supports the use of a range of effectiveness between 25 to 75 percent and a median value of 50 percent.

c. Boeing and Airbus Airplanes Have an Equal Risk of an Explosion

We concluded that all airplanes with HCWT had similar levels of fuel tank flammability and the associated increase in the likelihood of a fuel tank explosion. We based the SFAR 88 effectiveness estimates on the HCWT fleet as a whole. We did not differentiate among airplane models based upon design differences that could affect the likelihood of an ignition source forming.

AEA, Airbus, Frontier Airlines (Frontier), the Air Safety Group UK, Singapore Airlines (Singapore), BAE Systems (BAE), TDG Aerospace (TDG) disagreed with this proposal and argued that the risk of an explosion is lower for Airbus airplanes. These commenters noted that fuel tank designs for those airplanes that experienced a fuel tank explosion are at least a decade older than Airbus' designs. Airbus argued that its airplanes use newer technology and design philosophies that have incorporated the lessons learned from prior designs. BAE and two individuals suggested that we address fuel tank flammability by issuing ADs to address specific design shortfalls in the two airplane types that have experienced fuel tank explosions (i.e., the Boeing 737 and 747 series airplanes).

While we did note differences between the designs and technologies used by Boeing and Airbus, we concluded that the risk of an explosion was equal for Boeing and Airbus airplanes based on similarities in their fuel tank designs and service history. We found that both manufacturers have similar problematic fuel tank design features. For example, air conditioning equipment is located below the center wing tank in both manufacturers' designs (and HCWT have flammability exposure well above that of a conventional unheated aluminum wing tank). Likewise both manufacturers locate fuel gauging systems with capacitance measuring probes inside the fuel tank, and associated wiring to the probes enters the fuel tank from outside. These wires are co-routed with high-energy wiring to other airplane systems that have sufficient energy to cause an ignition source inside the fuel tanks. Finally, high-energy electrical fuel pumps are located within the fuel tanks and are fuel-cooled and manufactured by the same component suppliers. Arcing of the pump could cause a spark inside the fuel tank or could create a hole at the pump connector, causing a fuel leak and an uncontrolled fire outside of the tank.

As for the service history and design reviews of Airbus airplanes, we found numerous situations that indicate a risk of an explosion similar to those aboard Boeing airplanes, including:

- The electrical bonding straps used on Airbus airplanes have been reported

[10] Document Number FAA–22997–6 in the docket for this rulemaking.

to degrade due to corrosion; the bonding jumpers used by Boeing are made of a different material that does not corrode.

- All fuel pumps on Boeing airplanes are being modified to incorporate ground fault power interrupters, whereas only pumps that can arc directly into the fuel tank ullage are being modified to incorporate ground fault power interrupters on Airbus airplanes.
- The safety assessments conducted by both manufacturers resulted in very similar numbers of ignition sources that required modifications to their airplanes.
- After the SFAR 88 assessments were completed, we learned that fuel quantity indicating probes within the fuel tanks of Airbus A320 airplanes could be an ignition source due to sparks that could be created following a lightning strike. This resulted in the issuance of AD 2006–06–14.
- After the SFAR 88 assessments were completed, we learned that the improper installation of a screw inside the fuel pumps of Airbus A320 airplanes could result in the screw loosening and falling into the pump electrical windings. This could create a spark and ignite vapors in the pump that could exit the fuel pump housing into the fuel tank through the hole created when the screw fell out of the housing. This resulted in the issuance of AD 2006–12–02.

The recent discovery of the ignition sources in Airbus A320 airplanes is evidence that unforeseen failures will occur in the future that can result in ignition sources on Airbus airplanes. The Airbus fleet has significantly fewer flight hours than Boeing airplanes and, as the Airbus airplanes age, we expect to see more unforeseen failures. Therefore, based on design similarities and service history, we see no reason to differentiate between Airbus and Boeing airplanes. This rule requires all affected manufacturers to determine the fuel tank flammability exposure of their airplanes by assessing them against performance-based requirements that specify a flammability exposure that we have determined provides an acceptable level of safety. Additional action is only required for those airplanes that do not meet the required level of fuel tank flammability safety.

d. ARAC Flammability Exposure Data

Airbus and AEA both commented that the ARAC flammability exposure data cited in the NPRM are incorrect and need to be reduced based on updated data developed by both Boeing and Airbus. They said this reduction is important since the lower data reduce the level of safety improvement that can be achieved by this rule from the FAA's intended ''order of magnitude'' (factor of 10) to a safety improvement in the range of only a factor of 7.7 to 2.7, depending on the model used. Airbus also objected to our conclusion that a HCWT, depending upon the airplane model and its mode of operation, is explosive 12 to 24 percent of the time. Airbus requested that this be corrected to reflect the latest industry estimates for Airbus products (i.e., 8 to 12 percent) and 16 to 18 percent for other manufacturers.

We acknowledge that the flammability exposure data cited in the NPRM may not reflect current values. However, Boeing and Airbus submitted those data to us as part of the SFAR 88 reviews. While we agree with Airbus that more recent information has indicated lower flammability for HCWTs, we do not agree that the more recent values should be used since the manufacturers have not submitted a validated analysis using the revised flammability assessment techniques (as defined in § 25.981) to support its figures. Changes to the method for calculating fuel tank flammability, such as airplane ground times used in the Monte Carlo analysis required by Appendix N may result in additional variations in flammability calculations. Since flammability reduction was first considered by the aviation industry, the flammability values quoted by airplane manufacturers have varied considerably. These variations were the result of the method used to calculate the flammability of the fuel tanks and more accurate fuel tank temperature data based upon flight tests. For example, the first ARAC determined values ranged from 10 to 50 percent for generic airplanes equipped with HCWT. After the conclusion of this activity, Airbus was quoted in *Air Safety Week* as stating the A310 HCWT having a flammability exposure of 4 percent. In 2001, as part of the SFAR 88 compliance, Airbus submitted flammability values to the European Aviation Safety Agency (EASA) and to us that ranged between 12 and 23 percent.

We recognize that as methods for measuring fuel tank flammability are refined, it is likely that calculated flammability exposure will also change. These refinements also apply to the conventional unheated aluminum wing tanks that ARAC used as the baseline for determining an acceptable exposure. We now know that the exposure of these tanks is considerably lower than originally estimated by ARAC. However, none of this new information changes the findings of ARAC that HCWTs have significantly higher risk of fuel tank explosions, or that the reduction in flammability exposure would be on the order of a factor of 10. Therefore, we do not believe that these refinements change the overall conclusion that certain fuel tanks that are affected by this rule have significantly higher flammability exposure than conventional unheated aluminum wing tanks. No change has been made to the final rule as a result of these comments.

e. Accidents Directly Correlate to Flammability Exposure

Airbus did not agree with the assumption that the rate of accidents directly correlates to flammability exposure. Airbus contended that the risk of ignition source development must also be considered when evaluating the benefits of flammability reduction.

We agree with Airbus that the overall risk of a fuel tank explosion includes both the potential for an ignition source and the likelihood that the fuel tank will be flammable when an ignition source occurs. There may be differences in the likelihood of an ignition source occurring between different airplane types, but these differences would be very difficult to quantify. We have no statistically significant, validated data that could be used to establish rates of development of ignition sources for different airplane types. As discussed in the Sandia report, there is a wide variation in the predicted rate of ignition sources developing in fuel tanks and there is no industry agreement on the rate that should be used for individual airplane designs. In addition, recent service history shows there have been a number of ignition sources that have developed following the TWA 800 accident in both Airbus and Boeing airplane models.

Given this lack of data and consensus on ignition source risks, we continue to believe that correlating accident rates with flammability exposure is the most appropriate analytical approach.

2. Additional Research Needed

Airbus, AAPA, AEA, EASA, Iberia Maintenance and Engineering (Iberia), Singapore and Virgin Atlantic Airways (Virgin) stated that this rulemaking is premature because the risks of additional fuel tank explosions are not adequately defined. These commenters argued that additional research is necessary to better understand flammability, SFAR 88 effectiveness and the risks of additional explosions. In a related comment, the International Federation Victims of Aviation Accident (IFVAA) stated that additional research should be performed to identify

technology that would completely eliminate, not just reduce, fuel tank flammability.

We think it would be a mistake to delay this rule to conduct additional research. Service history and the recent occurrences of ignition sources described earlier demonstrate that the risk of future explosions remains significant. In addition, we believe that additional research would not provide any useful information that would change our finding that flammability reduction, in combination with the SFAR 88 measures, is needed to prevent such explosions. As for IFVAA's comment, we consider existing flammability reduction means highly effective and sufficient to reduce the risk of fuel tank explosions to an acceptable level. While further research might identify even better solutions, the resulting delay would deprive the public of the benefits of these currently available safety improvements.

3. Consistent Safety Level With Other Systems

Airbus commented that SFAR 88 improvements, together with the current rate of occurrence, put fuel tank safety on the order of one accident for every billion flight hours (i.e. 10^{-9} accidents per flight hour) which is consistent with safety objectives of other critical airplane systems.[11] Airbus argued that this rule requires fuel tanks to go to a higher level of safety than other critical systems and that this is inconsistent with the overall risk.

Application of existing safety standards to prevent ignition sources that are similar to those applied to other systems has not resulted in an acceptable level of safety, and we have determined that limiting fuel tank flammability is also needed. Fuel tank explosions are unacceptably occurring at a rate greater than 10^{-9} per flight hour and the recent events described above show that unanticipated failures continue to result in ignition sources within airplane fuel tanks. To protect the flying public, we have developed a ''fail safe'' policy for fuel tank safety that includes both ignition prevention and flammability reduction to reduce fuel tank explosion risk to an acceptable level.

4. Human Errors

AEA stated that human errors are not new and should not be used to justify this rule. AEA pointed out that TC holders are obliged to consider human error during airplane design to mitigate errors. In addition, continuing airworthiness instructions (e.g., maintenance manuals) highlight safety considerations where necessary. AEA also contended that, in the 17 accidents cited by the FAA in the NPRM, there is no evidence that any were caused by the introduction of an ignition source through human error. Finally, AEA noted that human errors will always be a factor in aviation safety, particularly when introducing added complexity such as an inerting system.

We agree with AEA that human errors are not a new phenomenon and that the introduction of new systems on airplanes can have unintended consequences resulting from human error. We also believe the safety benefits of FRM or IMM is warranted. Service history shows the current regulations do not provide an adequate mitigation of human errors for fuel tank systems. Ignition sources continue to occur even though designers have conducted analyses that concluded ignition sources would not occur. Earlier in this document, we discussed numerous ignition sources that have recently developed in airplanes that had previously been shown by safety assessments to have features that would prevent ignition sources from developing. These ignition sources were caused by errors in defining assumptions in safety assessments, as well as in the design, manufacture and maintenance of these airplanes. These events show that an additional layer of protection (in the form of FRM or IMM) is needed to prevent future fuel tank explosions.

5. Explosion Risk Analysis

American Trans Air commented that the assumptions made in the explosion risk analysis were erroneous and not within the range of reasonable values. American Trans Air recommended that a completely new analysis of the fuel tank explosion risk be undertaken. This new analysis should utilize widely accepted assumptions, including taking into account:

- The history of particular type designs.
- The actual ignition risk potential (i.e., potential ignition sources not in the ullage are either exempted, or substantially discounted in the analysis).
- Actual ignition energies, applying these energies to the potential ignition sources.
- The definitions and assumptions of fuel-air vapor mixtures that have been further derived and applied on an individual type design basis.

We agree with the commenter that the assumed fuel air vapor mixture should be based upon the individual fuel tank design, and we included variations in the pressure and temperature of the fuel when developing the fuel tank flammability model. This factor is already accounted for in the Monte Carlo method defined in Appendix N. As for the other assumptions offered by American Trans Air, they cannot be used in an analysis, because there is a wide variation in the possible values.

6. Special Certification Review Process vs. Rulemaking

American Trans Air commented that if an analysis identifies type designs still found to have unacceptable risk after all SFAR 88 alterations have been executed, an appropriate response to address the remaining at-risk type designs may be the use of the special certification review process. American Trans Air noted that there appears to be wide variability in the risk between type designs, and concluded that generalized rulemaking is inappropriate at this time.

We do not agree that we should address each type design with unacceptable flammability risk by special certification review and then by an appropriate AD. Through careful study, we have determined that the flammability risk on many airplanes is too high. To address this risk, we have created an objective design standard by which all airplanes can be measured. If airplanes currently meet this design standard, no action will be required. The TC holder for those airplanes that do not meet it will have to make only those changes that bring that airplane model into compliance. We have determined that the uncertainty involved in the elimination of ignition sources requires reduced flammability to acceptably reduced tank explosion risk, and the most effective and efficient way to address this issue is through the rulemaking process.

7. Flammability Reduction Means (FRM) Effectiveness

In the NPRM, we said lowering the flammability exposure of the affected fuel tanks in the existing fleet and limiting the permissible level of flammability on new production airplanes would result in an overall reduction in the flammability potential of these airplanes of approximately 95 percent. Airbus and AEA commented that we overstated the potential benefits of flammability reduction measures by a factor between 4 and 7. They said we used a factor of 20 (95 percent) for the

[11] This is the quantitative probability measure (one in one billion) of an event that is ''extremely improbable'' as that term is used in § 25.1309 and other part 25 airworthiness standards. See AC 25.1309.

reduction in flammability exposure achieved by reducing the flammability of HCWT to 3 percent or less. They said the subsequent reduction in flammability will be in the order of a factor of three to five and not a factor of 20. Therefore, the number of accidents prevented would consequentially be less than projected by the FAA. Airbus also said the FAA appears not to have considered the effectiveness of the FRM itself, which it said is in the order of 67 to 87 percent by latest industry estimates. Therefore, Airbus suggests that the Initial Regulatory Evaluation (IRE) is incomplete and should be revised to include this key parameter.

The 95 percent value used in the NPRM was not based on the ratio of fuel tank fleet average flammability exposure before and after implementing the requirements of this rule. It was derived by qualitatively evaluating the effectiveness of an FRM in preventing fuel tank explosions that would not be prevented by ignition prevention measures.

When an FRM is installed on a fuel tank, it must meet both the 3 percent fleet average flammability exposure and also the 3 percent warm day (specific risk) flammability exposure requirements.[12] For the warm day requirement, the flammability exposure must be below 3 percent during ground and takeoff/climb conditions for those days above 80 degrees F when the FRM is operational. These are the conditions when fuel tanks tend to have the highest flammability exposure and when the accidents discussed earlier occurred.

The combination of the warm day requirement and the fleet average flammability requirement results in an FRM with overall flammability reduction benefits that are significantly higher than those estimated by the commenters. Since the NPRM was issued, we have reviewed and approved FRM designs and have found the performance exceeds the certification limits. When the FRM is operating, the fuel tanks are rarely flammable. So, the major risk of fuel tank flammability occurs when the system is inoperative and this time is limited to a maximum of 1.8 percent of the Flammability Exposure Evaluation Time (FEET). Historically, designers provide a safety margin in the design so that the design limits are never exceeded, so we would expect the flammability to be below this level.

Another consideration in using a 95 percent effectiveness measure is the safety improvement noted during warm days. Without any FRM, a HCWT is flammable about 50 percent of the time during climb. Meeting both the 3 percent warm day requirement and the 3 percent reliability requirement results in a flammability exposure of the tank of less than half of one percent during climb. For an airplane with an initial warm day flammability of 50 percent, this is a 99 percent reduction in the flammability during climb. We, therefore, used the 95 percent effectiveness for flammability reduction in the risk model for the final regulatory evaluation.

C. Applicability

1. Airplanes With Fewer Than 30 Seats

The proposed DAH requirements would apply (with some exclusions) to transport category turbine-powered airplanes approved for a passenger capacity of 30 or more persons or a maximum payload capacity of 7,500 pounds or more. The UK Air Safety Group disagreed with the proposed rule's limited applicability because the design of fuel tank systems is similar for both large and small airplanes. Therefore, it argued that the potential explosion hazard is equal. The commenter also noted that EASA's CS–25 regulation for Fuel Tank Ignition Prevention does not make any distinction based on the number of passenger seats.

We did not include smaller part 25 airplanes in the DAH requirements of this final rule because those airplanes generally do not have high flammability tanks. While some parts of their fuel tank system designs are similar to those of larger airplanes, we do not agree that the overall architecture and the risk of a fuel tank explosion are equal. Data submitted by manufacturers of smaller part 25 airplanes as part of the SFAR 88 analysis show that their airplanes typically do not have fuel tanks located within the fuselage contour, and would not be considered high flammability fuel tanks. In most cases, cool fuel from the wing tanks is drawn into the center wing box, so the overall flammability is low. In addition, these tanks are not normally emptied, reducing the amount of ullage.

Based on these facts, the benefits of including these smaller airplanes in all of the requirements of this rule are minimal and do not warrant the cost. However, we do agree that the part 25 requirements applicable to new type designs should be the same for all transport category airplanes, regardless of size. The cost to design and produce a new airplane to meet the flammability requirements is significantly less than that for existing airplanes since the designers can optimize the performance of the FRM or IMM and integrate it into the airplane design to minimize costs. Therefore, § 25.981 of this rule applies to all transport category airplanes regardless of size.

2. Part 91 and 125 Operators

The NPRM proposed that operators under parts 91, 121, 125, and 129 incorporate FRM or IMM and keep it operational on their affected airplanes. The AEA and Airbus asked that parts 91 and 125 operations be excluded and cited corporate use airplanes as an example of operations where the cost would far exceed the benefit. According to AEA and Airbus, the cost/benefit analysis for these airplanes, when operated under part 91 or part 125, would produce results similar to those for all-cargo airplanes (which are excluded from the retrofit requirements of this rule).

We recognize a distinction between part 91 and part 125 operations, in that part 91 does not allow commercial operations for compensation or hire, while part 125 does allow such operations, as long as the operator does not ''hold out'' to the public that they are available for such operations (in which case they would be required to operate as an air carrier). For example, many business jets are operated under part 91 if the operator does not receive compensation for transporting passengers (e.g., a corporate jet transporting the corporation's employees). On the other hand, charter companies frequently operate under part 125 to transport sports teams and other groups for compensation.

While we recognize that private owners and operators may choose to assume the risk of possible fuel tank explosions, we see no reason why persons flying on commercial charter flights should be exposed to a greater risk of a fuel tank explosion than passengers flying on airplanes operated under parts 121 and 129. Commercial charter passengers are in no better position to recognize and accept the risk of a fuel tank explosion than are air carrier passengers. Additionally, the risk and likelihood of a fuel tank explosion are potentially commensurate with that of the same airplane model operated

[12] The overall time the fuel tank is flammable cannot exceed 3 percent of the Flammability Exposure Evaluation Time (FEET), which is the total time, including both ground and flight time, considered in the flammability assessment defined in proposed Appendix N. As a portion of this 3 percent, if flammability reduction means (FRM) are used, each of the following time periods cannot exceed 1.8 percent of the FEET: (1) When any FRM is operational but the fuel tank is not inert and the tank is flammable; and (2) when any FRM is inoperative and the tank is flammable.

under parts 121 and 129. Therefore, the final rule has been revised to exclude part 91 operations, but does not exclude part 125 operations. However, because of the significant safety benefits of this rule, we encourage part 91 operators to install FRM on their airplanes, and not to remove it if it is already installed.

3. All-Cargo Airplanes

In response to our request for comments on the proposed exclusion of all-cargo airplanes from this rulemaking, we received numerous comments both supporting and opposing the exclusion. Airbus, the Cargo Airline Association (CAA), FedEx, ATA, ABX Air (ABX), United Parcel Service (UPS), and National Air Carrier Association (NACA) agreed that all-cargo airplanes should be excluded from this rulemaking. The CAA argued that the risks are lower for cargo carriers due to several factors:

a. Cargo operations are predominately night operations with lower outside ambient temperatures (making fuel tanks less likely to be flammable).

b. Cargo operators do not typically run air conditioning packs prior to takeoff as many passenger operators do.

c. The CAA members typically operate one to two round trips each day, which is a lower utilization rate than most passenger airplanes.

The CAA stated that costs to various airline industry segments should be considered when proposing any new regulation. The CAA supported establishing a safety baseline which allows different operations to meet the baseline in different ways. Based on the factors articulated above, the CAA maintained the cost/benefit analysis does not justify its application to cargo airplanes.

FedEx commented that there is a finite amount of safety dollars and it is important to use them effectively. As the cost/benefit analysis does not justify inclusion of all-cargo airplanes, FedEx claimed it is not permissible to include them under FAA rulemaking authority. ATA stated that the proposed rule should not apply to all-cargo airplanes, other than the design rules proposed to prevent modifications that could increase the flammability exposure of a fuel tank. ABX agreed with ATA, and noted that the ignition prevention measures of SFAR 88 provide an acceptable level of safety for these airplanes. Finally, Airbus and UPS based their support for our proposal to exclude cargo airplanes on the reasons stated in the NPRM.

On the other hand, the National Transportation Safety Board (NTSB), the Independent Pilots Association (IPA), the Air Line Pilots Association (ALPA), the EASA, the Coalition of Airline Pilots Association (CAPA), Singapore and the National Air Traffic Controllers Association (NATCA) do not agree that all-cargo airplanes should be excluded from this rulemaking. While the NTSB, IPA and NATCA acknowledged that cargo airplanes typically carry fewer people, they pointed out that these airplanes regularly use airports in densely populated areas where an accident could have a catastrophic effect for people on the ground. The NTSB and IPA also cited a recent DC–8 cargo fire accident where an inerting system might have prevented or substantially reduced the magnitude of the fire, and a C–5A accident at Dover Air Force Base where the presence of an inerting system may have been the reason many lives were saved.

The IPA also stated that there should be one level of safety for all part 25 airplanes, and noted that all-cargo airplanes are typically older (which makes them more susceptible to ignition sources within the tank). In addition, ADs are being issued on even the newer models to restrict operations for flammability/ignition concerns.

ALPA commented that all-cargo airplanes should not be excluded from critical safety improvements simply because there are fewer fatalities in a typical crash. ALPA recommended that we apply a firm deadline for the manufacturers to complete a flammability analysis on all-cargo airplanes compared to the passenger versions of the same airplane model.

EASA did not agree with introducing a new distinction among part 25 products. In EASA's view, the justification for excluding all-cargo airplanes has yet to be substantiated. CAPA thought the logic of excluding all-cargo airplanes could be extended to each individual operator or to all airplanes with differing passenger capacities. For example, CAPA questioned whether, if operator ''A'' had many more Boeing 737 airplanes than operator ''B'', would we require Operator ''A'' to use FRM while Operator ''B'' would not have to. CAPA stated that this same type of flawed logic is being applied to all-cargo airplanes. In its opinion, the value of pilot lives should not depend on what is in the back of the airplane. Finally, NATCA commented that confidence in flying would be diminished if there were a cargo airplane accident, and we should not set a precedent that sets a different safety standard based on the intended operation of the airplane.

Boeing stated that its safety philosophy is to not differentiate between passenger and cargo airplanes in managing fleet-wide airplane risk and therefore, did not exclude airplanes designed solely for cargo operations in their proposed revision to § 25.981(b).

After reviewing these comments, we have decided that we will not require existing all-cargo airplanes to meet the retrofit requirements in this final rule. We did not receive any data on the costs, benefits or risks for all-cargo airplanes in response to our request in the NPRM, and we do not have any new data to justify requiring retrofit of FRM or IMM on the current fleet of all-cargo airplanes. We will continue to gather additional data regarding these factors and may initiate further rulemaking action if the flammability of these airplanes is found to be excessive.

However, we will require compliance with the requirements of this final rule for (i) future designs; (ii) the conversion of any passenger airplane with an FRM or IMM to all-cargo use; and (iii) future production of all-cargo airplanes. We agree with NATCA and other commenters with respect to removing the exclusion from § 25.981 of airplanes designed solely for all-cargo operations. The airworthiness standards of part 25 do not impose different requirements depending on the intended use of the airplane. 49 U.S.C. 44701 requires that we adopt such minimum airworthiness standards as are necessary, and historically we have recognized that those minimum standards should be the same for all transport category airplanes, regardless of their intended use. There are practical reasons for this approach, since the intended use can change quickly based on business considerations unrelated to safety. Therefore, we agree that the proposed new design standards in part 25 should not distinguish between all-cargo and passenger airplanes.

The rationale for including a production cut-in for all-cargo airplanes is based upon the long-term goal of fleet-wide reduction in flammability exposure to eliminate the likelihood of fuel tank explosions. In addition to the immediate effects of an accident, we believe a fuel tank explosion on an all-cargo airplane could have a significant impact on the aviation industry due to public sensitivity to terrorist actions. The cost of installing FRM in new production airplanes is less than the cost of to retrofit airplanes, because the installation can be efficiently integrated into the production process. In most cases, this integration will be done for the passenger version of the same airplane, so additional engineering work will be minimal. The benefits of production cut-in are also higher than

for retrofit since the new airplane has a longer life and reduced flammability will provide safety benefits for the life of the airplane.

As for conversion airplanes, when older airplanes can no longer be operated competitively in passenger service, it is common for them to be converted to all-cargo service. Since many passenger airplanes will have FRM or IMM already installed as a result of this rule, operators may be inclined to deactivate or remove the FRM or IMM to reduce operational costs, if these airplanes are converted to all-cargo airplanes in the future. We do not believe it would be in the public interest to allow previously installed systems to be deactivated because the capital cost to install the systems would already have been incurred, and the safety benefits of retaining the system would outweigh any cost savings that might result from deactivating them. Accordingly, we have revised the operational rules to prohibit deactivation or removal of FRM or IMM under this scenario.

The regulatory evaluation for this final rule has been revised to address these factors and concludes that imposing these requirements on all-cargo airplanes is cost effective for new designs and newly produced all-cargo airplanes. Prohibiting deactivation of FRM or IMM on converted airplanes is also cost effective.

4. Specific Airplane Models

Proposed § 25.1815(j) listed specific airplane models that would be excluded from the requirements of proposed § 25.1815 (now § 26.33). These are airplane models that, because of their advanced age and small numbers, would likely make compliance economically impractical. In the NPRM, we asked for comments on other airplane models that may present unique compliance challenges and should be excluded from the requirements of this rule. In response to this request, we received several comments requesting that additional specific airplane models be excluded from this rule. Given the number of models identified, we have decided it makes more sense to ''grandfather'' all models manufactured before a certain date. Based on these comments, we have changed the applicability of the design approval holder requirements in proposed § 25.1815(a) (now § 26.33(a)) from those airplanes type certificated after January 1, 1958 to those airplanes produced on or after January 1, 1992.

a. Out-of-Production/Low Service Life Remaining Models

Boeing and Airbus recommended that the rule only apply to airplane models and auxiliary tanks currently in production, or recently out-of-production, that have significant numbers in service and will continue in service well beyond the date when 100 percent compliance is achieved. Based on this standard, Boeing submitted a list of airplane models and auxiliary tanks to add to the excluded models in proposed § 25.1815(j), including the DC–8, DC–9, DC–10, MD–80, MD–90, MD–11, Boeing 707, 720, 727, 737–100/–200, 747–100/–200/–300 and associated derivatives, and 737–300/–400/–500 (auxiliary tanks only). Airbus requested that the Airbus A300/A310 series airplanes be added to the list based on this standard.

We acknowledge that there is no reason to require design approval holders (DAHs) to develop design changes for airplanes that will be retired before FRM or IMM installation is required by this rule. Conducting the flammability assessments and developing design modifications for those airplanes would require significant engineering resources. More importantly, these airplanes would not benefit from the development of FRM or IMM, since they would be retired or converted to cargo operations before the installation of these systems is required. Therefore, we have limited the applicability of the DAH requirements in the final rule (proposed § 25.1815(a), now § 26.33(a)) to airplanes produced on or after January 1, 1992.

The youngest of the airplanes produced before then would be more than 25 years old by the time operators would be required to modify them. We agree with the commenters that the vast majority of these airplanes would either be retired or converted to cargo service before they reach that age. This is consistent with current practice. This limitation has the effect of excluding the Boeing 707, 727, 737–100/200 and 747–100/200/300; the McDonnell Douglas DC–8, DC–9, DC–10, and KC–10/KDC–10; and the Lockheed L–1011. Airplanes of the other models that Boeing, Airbus and ATA requested be excluded have been produced on or after January 1, 1992. For airplanes produced on or after January 1, 1992, the remaining life and likelihood of their continued operation in passenger service is sufficient to require compliance with the requirements of this rule.

To clearly differentiate between airplanes produced before and after this date, we changed proposed § 25.1815(a) (now § 26.33(a)) to refer to the date when ''the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval.'' This information is readily available to the TC holders who applied for these approvals. We also added a provision to proposed § 25.1815(d) (now § 26.33(d)) to require the service information describing FRM or IMM to identify the airplanes that must be modified under this rule. This will make it readily apparent to operators which of their airplanes are subject to the retrofit requirements.

For airplanes with high flammability tanks produced before 1992, instead of requiring operators to retrofit these airplanes, we have added a provision in the operational rules prohibiting passenger operations of these airplanes after the date by which an operator's airplanes that are subject to the retrofit requirement must be retrofitted.[13] This enables operators to convert these airplanes to cargo service rather than to retrofit them. If operators of these airplanes choose to operate them in passenger service past this date, they could contract with the DAH or a STC vendor to develop an FRM or IMM to meet the safety requirements of this rule. Without this provision, the exclusion of airplanes produced before 1992 could have the unintended consequence of encouraging operators to continue to operate these airplanes with high flammability tanks in passenger service, since the retrofit and operating costs of FRM or IMM would not have to be incurred.

These changes to the DAH and operational rules have the effect of making the applicability of these requirements different. The DAH requirements now only apply to airplanes produced on or after January 1, 1992, but the operational rules still apply to all airplanes meeting the applicability criteria proposed in the NPRM.[14] Therefore, we have revised the applicability provisions of the operational rule sections to incorporate these criteria, rather than referencing the applicability of the DAH rules.

As for Boeing's request to exempt certain auxiliary fuel tanks, as discussed

[13] As discussed later, we are also adding a provision that allows operators under parts 121 and 129 to extend the compliance date by one year based on use of ground conditioned air. Operators using this extension will be able to operate these pre-1992 airplanes in passenger service until they are required to have all of their post-1991 airplanes retrofitted.

[14] With certain listed exceptions, transport category turbine-powered airplanes type certificated after January 1, 1958, with a maximum passenger capacity of 30 or more or a maximum payload capacity of 7,500 pounds or more.

later in more detail, we have retained the requirement to conduct flammability assessments and impact assessments for auxiliary fuel tanks. However, we have delayed any action to require retrofit of IMM or FRM for auxiliary fuel tanks installed under STCs and field approvals until additional information can be gathered. We agree with Boeing that any auxiliary fuel tank installed in pre-1992 airplane models should also be excluded from the need to conduct flammability assessments, since we have determined we would not take action against any tank in these airplane models due to their advanced age.

b. Limited U.S. Inventory Models

Airbus requested that airplanes having a limited U.S. inventory be excluded from this rule, because the operators of these airplanes would shoulder a disproportionate impact of non-recurring engineering expenses needed to design and develop FRM systems. Under this standard, Airbus asked that the A330–200 (only 11 N-registered airplanes) and the A340 (no N-registered airplanes) be added to proposed § 25.1818(j). We cannot agree with the Airbus suggested approach. We have no way to predict future market conditions in the United States for the A330–200 and A340 model airplanes. Airbus continues to sell these models and lessors continue to offer them for lease. Based on market conditions, U.S. operators may add these models to their fleets in larger numbers and we see no reason why persons flying on these airplanes should be exposed to a greater risk of a fuel tank explosion. Therefore, we are not excluding these airplane models from the requirements of this final rule.

c. Airbus A321

Airbus and ATA suggested the A321 should be excluded because this model does not have fuel pumps in the center wing tank, reducing the risk of a fuel tank explosion. The lack of fuel pumps does not adequately mitigate the risk of an explosion. There are numerous potential ignition sources inside fuel tanks that can result from failure of various components, including the fuel quantity indication system, motor driven valves, fuel level sensors, and electrical bonds. In addition, heating of the fuel tank walls by external heat sources introduces a concern that the hot surface could ignite the vapors in the tank. The justification provided for excluding this model (because the center tank does not have motor driven pumps located in the tank) does not address the overall fuel tank safety issue and would only have merit if fuel pump failures were the only potential ignition sources. Therefore, we are not excluding this airplane model from the requirements of this final rule.

d. Airplanes With Low Flammability Tanks

The proposed retrofit limit for an acceptable fleet-wide average flammability exposure was 7 percent. We determined that fuel tanks having a flammability exposure greater than 7 percent are high flammability tanks that present a greater risk for fuel tank explosion. American Trans Air commented that, we stated in the NPRM that some airplanes have center tanks with a fleet average flammability exposure that does not exceed 7 percent, including ''the Lockheed L–1011, and Boeing MD–11, DC10, MD80, and Boeing 727, and Fokker F28 MK100.'' American Trans Air stated that this implies that we have information in our possession indicating that these airplane models already meet the proposed flammability limits, and asked that we add these models to the list of excluded airplanes in proposed § 25.1815(j) (now § 26.33).[15]

The statement quoted by American Trans Air from the NPRM was based on previous flammability assessments provided to us for SFAR 88 compliance. These assessments were based upon simplified assessment methods. For airplanes produced after January 1, 1992, we have retained the requirement to conduct flammability assessments on these airplanes to ensure that the earlier assessments are correct and that design changes for these tanks are not necessary. Once the assessment has been made, a manufacturer or operator may not need to make any change to the airplane. This is because the flammability risk assessment may disclose a level of risk below the threshold required for modification. As discussed earlier, we are allowing a qualitative assessment for conventional unheated aluminum wing tanks, which will substantially reduce the burden for completing the flammability assessments.

5. Wing Tanks

a. General

Proposed § 25.981 does not apply the same flammability standard to all fuel tanks, and requires lower flammability limits for ''fuel tanks that are normally emptied and located within the fuselage contour.'' The NTSB expressed concern that wing fuel tanks have exploded, and noted that its safety recommendations were not limited to:

(1) Certain types of fuel tanks,

(2) Tanks with specific types of exposure, or

(3) Tanks with explosive risks that vary or lessen over time.

The NTSB stated that we should take action to prevent all tanks from having flammable fuel-air mixtures in the ullage. The NATCA agreed, and stated that, to achieve an acceptable level of safety, the requirements of § 25.981 that apply to new airplanes should establish the same flammability standard for all fuel tanks regardless of location. The NATCA supported this suggestion by referencing the ARAC accident summaries that showed 8 out of 17 fuel tank explosions have involved wing tanks. The ALPA also expressed concern that certain wing designs and system installations may result in internal heating of the wing structure and ultimately the wing fuel tanks. The ALPA stated that we must insist that those specific installations fall under the requirements of this rule and that no unsafe flammability exposure exist in those wing tanks.

In contrast, Embraer, Bombardier Aerospace (Bombardier), and American Trans Air opposed incorporation of new flammability standards for conventional wing tanks. Embraer stated the benefits would be negligible and would not justify the costs. Embraer maintained that service history provides ample evidence that conventionally designed wing tanks inherently provide sufficient protection from fuel tank ignition when conventional fuels are used and that the current requirements are adequate. American Trans Air commented that many twin engine airplane type designs utilize a common fuel system operational concept that results in low exposure to high energy ignition sources in the main wing tanks. This exposure is further reduced in airplanes operated in extended-range twin-engine operations (ETOPS) service, due to the increased fuel reserves required in these operations.

The service history of conventional unheated aluminum wing tanks that contain Jet A fuel indicates that there would be little safety benefit by further limiting the flammability of these tanks. While NATCA and the NTSB expressed concern because accidents have occurred in wing fuel tanks, they did not differentiate service experience based on fuel type used (JP–4 versus Jet

[15] As we discussed above, we have limited the applicability of the DAH requirements in § 26.33 to airplane models produced on or after January 1, 1992. This date excludes the Boeing Model 727, DC–10 and the Lockheed L–1011. The other airplane models mentioned by the commenter have airplanes produced after 1991 and would be covered by this rule.

A). Our review of the nine [16] wing tank ignition events shows that 5 of the 9 airplanes were using JP–4 fuel and this type fuel is no longer used except on an emergency basis in the U.S. Three of the remaining four events were caused by external heating of the wing by engine fires, and the remaining event occurred on the ground during maintenance. To date, there have been no fuel tank explosions in conventional unheated aluminum wing tanks fueled with Jet A fuel that have resulted in any fatalities. The flammability characteristics of JP–4 fuel results in the fuel tanks being flammable a significant portion of the time when an airplane is in flight. This is not the case for wing tanks containing Jet A fuel. Therefore, a conventional unheated aluminum wing tank (that quickly cools in an airplane model approved for Jet A fuel) would not require FRM or IMM.

As proposed, § 25.981(b) maintained the intended flammability standards for wing tanks that were introduced in 2001, as part of Amendment 25–102 to part 25.[17] The proposed text clarified the existing term ''means to minimize the development of flammable vapors'' by including references to a conventional unheated aluminum wing tank, or 3 percent average flammability. Therefore, no new flammability standards are introduced for conventional wing tanks. Fuel tanks manufactured from materials other than aluminum, or that have unique features that would not allow cooling of the fuel tank (such as a small surface area exposed to the air stream) or that are heated (such as by having warm fuel transferred from another tank) may need FRM to comply with the previously issued requirements.

b. Use of Composite Materials

Airbus pointed to the industry trend towards the use of composite materials, which tend to have a lower heat transfer coefficient than aluminum. These materials act as insulators, slowing down any heating or cooling effects. Therefore, new TC designs using composite structures will have a natural flammability exposure greater than an equivalent conventional unheated aluminum wing tank, and designers will be forced to implement FRM. The NATCA noted that, with increased use of composites in wing designs, the assumption that wing tanks cool adequately may be incorrect.

We agree that composite materials may act as an insulator that will not allow fuel tank cooling, resulting in increased flammability. Limiting fuel tank flammability using FRM may be needed to meet the flammability exposure of a ''conventional unheated aluminum wing tank'' that is required by § 25.981. Airbus's suggestion that it is impractical for the rule to mandate the use of inerting for wing fuel tanks on airplanes with composite fuel tanks is not supported by recent events. While this rule is performance based and means other than inerting could be used, inerting has been found to be one means that is both technically feasible and economically viable. For example, the Boeing 787 will have wing fuel tanks constructed of composites, and FRM using nitrogen has been incorporated into the design to reduce the fuel tank flammability below that of a conventional aluminum wing tank.

6. Auxiliary Fuel Tanks

a. Definition

In the NPRM, we described auxiliary fuel tanks as tanks that are installed to permit airplanes to fly for longer periods of time by increasing the amount of available fuel. The proposed rule defined an auxiliary fuel tank as one that is normally emptied and has been installed pursuant to an STC or field approval to make additional fuel available. We also stated that auxiliary fuel tanks are ''aftermarket'' installations not contemplated by the original manufacturer of the airplane.

Airbus and AEA suggested the definition of auxiliary fuel tank should be clarified. They recommended that we use the generally accepted definition that is in AC 25.981–2. Boeing also requested that the definition of an auxiliary fuel tank be revised to more generally state that it is a fuel tank added to an airplane to increase range instead of referencing it as one installed pursuant to an STC or field approval. Boeing noted that an airplane might be delivered with an Original Equipment Manufacturer designed, manufactured and type certified auxiliary fuel tank.

Changes to the regulatory text in proposed subpart I (now part 26) resulted in eliminating the need for this definition in the final rule. Therefore, we have deleted the definition of auxiliary fuel tank from proposed § 25.1803(a) (now § 26.31(a)) and will maintain the definition in AC 25.981–2.

b. Existing Auxiliary Tanks

Boeing, Airbus, AEA, and ATA commented that older auxiliary fuel tanks should be exempt from the requirements of this rule since the benefits would be small compared to the cost of the retrofits. Boeing stated by the year 2016, most of the airplanes with auxiliary tanks installed during production would be over 30 years old. Future service life is generally thought to be minimal for these older airplanes. Boeing also commented, based upon feedback received from some operators, that these operators would deactivate their auxiliary fuel tanks rather than install FRM or IMM. The ATA added that the favorable service history (no operational accidents caused by auxiliary tank overpressures or explosions), operating environment (minimal exposure to flammable conditions), and proximity to retirement for many of these tanks makes it unnecessary to include auxiliary tanks in the applicability of this rule. Finally, Embraer commented that only auxiliary fuel tanks located close to heat sources and lacking free stream cooling require the special attention that the rule proposes.

As discussed previously, we changed the language in proposed § 25.1815 (now § 26.33), which applies to TC holders, to limit its applicability to airplanes produced on or after January 1, 1992, and this would include any auxiliary fuel tanks installed by the original TC holder. Since § 26.35 (formerly § 25.1817) applies only to design changes to airplanes subject to § 26.33, this change from the NPRM has the effect of excluding most of the older auxiliary tank designs installed by STC or field approval, which were approved for installation on airplanes no longer subject to this rule.

For those auxiliary tanks approved under STCs or field approvals (if any) that are still covered under the rule, we believe that most of these tanks transfer fuel by pressurizing the tank with cabin air. The increased pressure results in reduced flammability that could be considered an FRM if the minimum flammability performance requirements are met. However, we have limited data on the number of these tanks currently in operation and their age. We currently do not have adequate information on the flammability exposure or the number and the type of auxiliary fuel tanks installed under STCs or field approvals to determine whether to subject them to the requirements of this final rule. Based upon these limited data, we cannot predict the number of high flammability auxiliary fuel tanks that

[16] As discussed previously, on May 6, 2006, a ninth wing tank ignition event occurred.

[17] As discussed in the NPRM, Amendment 25–102 revised § 25.981 to require that fuel tank flammability exposure be ''minimized.'' As explained in the preamble to that final rule, the objective of this requirement is to reduce the flammability exposure to that of an unheated aluminum wing tank.

will be in service in 2016 or the number of airplanes with auxiliary fuel tanks installed by STC or field approvals that could still be operational for some period of time past the year 2016.

While no conclusive evidence has been presented, the commenters have raised issues worthy of further study. To prevent delaying the safety benefits of compliance with this rule, we have elected to defer the portion of this rulemaking that would have required development and installation of an FRM or IMM for auxiliary fuel tanks installed by STC or field approvals for further study. We have removed these proposed requirements from both the DAH and operational rules.

To assess the possible safety benefits and costs more accurately, we are requesting further comments regarding information needed to determine if future action should be taken to address auxiliary fuel tanks installed by STC or field approvals. The rule retains the requirements for STC holders to conduct a flammability assessment of auxiliary fuel tank designs, to conduct an impact assessment of the auxiliary tank on any FRM or IMM, and to develop the modifications for any adverse impact that is found. These requirements are still necessary both to assess the need for further rulemaking and to prevent increasing the flammability exposure of tanks into which the auxiliary tanks feed fuel. This could potentially defeat the purpose of requiring reduced flammability for these tanks. To limit the scope and cost of the requirement to perform impact assessments, this requirement only applies to auxiliary tanks approved for installation on Boeing and Airbus airplanes that we currently are aware will be required to have FRM or IMM installed.

c. Future Installation of Auxiliary Tanks

While we are foregoing action to require retrofit of existing auxiliary fuel tanks, we recognize that this decision could allow installation of currently approved auxiliary fuel tanks indefinitely, even if their flammability exposure exceeds those allowed under this rule. Therefore, we have added a new paragraph to the operational rule sections [18] in this final rule to prohibit installation of any auxiliary tank after the retrofit compliance date (nine years after the effective date) unless we have certified that the tank complies with § 25.981, as amended by this rule.

[18] §§ 121.1117(n), 125.509(n), and 129.117(n).

d. Request for Comments

As discussed previously, we have concluded that additional information is needed before we can determine whether it would be cost effective to apply the requirements of this final rule to auxiliary fuel tanks installed under STCs or field approvals. The FAA, therefore, requests additional comments addressing the following specific questions:

1. Which airplanes produced on or after January 1, 1992, with 30 passengers or more or a payload of 7500 pounds, have auxiliary fuel tanks installed by STC or field approval?

2. What are the U.S. registration tail numbers of the airplanes with the tanks installed?

3. How many of these tanks are installed in airplanes used in all-cargo operations?

4. What is the STC holder's name and what are the STC numbers for these tanks?

5. How many of these tanks are installed under the Form 337 field approval process?

6. Are the tanks operational or deactivated?

7. How many engineering hours would be required to develop an FRM or IMM for these tanks?

8. How much would the parts cost for an FRM or IMM for these tanks?

9. What would the labor costs be for installing an FRM or IMM in these tanks?

10. How many days would it take to install an FRM or IMM in the affected airplane?

11. If the FAA required operators to install FRM or IMM, would those operators modify those tanks accordingly, or would they comply by simply deactivating those tanks? Please be model-specific for both passenger and all-cargo airplanes, if possible.

12. What would be the economic consequences to the operator of deactivating an auxiliary fuel tank?

Comments should be submitted to Docket No. FAA–2005–22997 by January 20, 2009. Comments may be submitted to the docket using any of the means listed in the **ADDRESSES** section later in the document.

7. Existing Horizontal Stabilizer Fuel Tanks

In the NPRM, we stated that horizontal stabilizer fuel tanks are fuel tanks that may be required to be retrofitted with FRM or IMM. We understood that these tanks may not cool rapidly, since a large portion of the fuel tank surface is located within the fuselage contour. Airbus stated that they do not believe the rule should apply to horizontal stabilizer fuel tanks, because these types of fuel tanks are low flammability and, if these tanks are treated as high flammability, the rule would impose significant additional costs to install FRM or IMM for these tanks. Therefore, Airbus concluded that we should either review these additional engineering complications and associated costs (particularly with respect to retrofit) or apply the same requirements to these tanks as those proposed for wing tanks not in the fuselage contour.

The retrofit requirement of this rule only applies to fuel tanks that have an average flammability exposure above 7 percent. To the extent the risk analysis indicates a particular fuel tank actually is a low risk tank, no further requirements would apply. Some horizontal stabilizers, including those made by Airbus, are manufactured from composite material that acts as an insulator. These tanks may also be used to maintain airplane center of gravity, so warmer fuel may be transferred into them during flight. These features may result in flammability exposure that exceeds the 7 percent limit that is used to establish whether retrofit of an FRM or IMM is required. Tanks constructed of composites may also exceed the flammability exposure established for new designs in § 25.981(b).

The analysis required by this rule will establish the flammability exposure and determine the need for an FRM or IMM in horizontal stabilizer fuel tanks. If fuel tanks located within the horizontal stabilizer are not high flammability tanks, then no FRM or IMM would be needed and no additional cost would be incurred for retrofit. However, if an FRM or IMM is required because the tank is determined to be high flammability, it should be possible, using standard design methods, to address the technical issues. For example, the pressure drop mentioned by Airbus can be addressed by using a properly sized and designed FRM so that adequate nitrogen can be supplied to any affected tank. This can be done using available technology and with costs that are consistent with those for other tanks considered in the regulatory evaluation. Airbus provided no technical justification for its assertion to the contrary.

8. Foreign Persons/Air Carriers Operating U.S. Registered Airplanes

Airbus, EASA, and the UK Civil Aviation Authority (UKCAA) requested a change to the wording of proposed § 129.117(a). This change would clarify that the applicability of this rule is

limited to foreign persons and foreign air carriers operating U.S. registered transport category, turbine powered airplanes for which development of an IMM, FRM or Flammability Impact Mitigation Means (FIMM) is required under proposed §§ 25.1815, 25.1817 or 25.1819 (now §§ 26.33, 26.35, and 26.37). Their understanding is that the paragraph is not intended to apply to airplanes registered outside of the United States.

As provided in §§ 129.1(b) and 129.101(a), the commenters are correct that § 129.117 would not apply to aircraft registered outside the United States. To clarify our intent, we have revised § 129.117(a) to include the words ''U.S. registered.''

9. Airplanes Operated Under § 121.153

In the proposed rule, the FAA requested comments on whether categories of airplane operations other than all-cargo operations should be excluded. In response to our request, AEA and Airbus noted that § 121.153 permits the operation, by U.S. airlines, of airplanes registered in another International Civil Aviation Organization (ICAO) member states under specified circumstances. They said that, while history shows that the use of the § 121.153 provisions is relatively rare, it can provide important flexibility when unusual circumstances dictate the urgent need of replacement airplanes for U.S. carriers. Given the small effect of excluding airplanes leased under the provisions of § 121.153 from any requirements of the proposed rule, the commenters recommend that they be excluded from applicability provisions of the proposed rule. Otherwise, they said, if compliance with the proposed retrofit requirements are applied as proposed, § 121.153 would preclude this practice for airplanes that have not been retrofitted with FRM. These commenters argued that this result would present a burden to both U.S. operators (who would lose the flexibility provided by § 121.153) and non-U.S. operators (for whom the value of their unmodified airplanes would be reduced).

Section 121.153(c) does not relate to a ''category of operation,'' such as all-cargo operations. Rather, it permits certificate holders to operate foreign registered airplanes for any type of operation, as long as the airplanes meet all applicable regulations. Allowing the operation of foreign registered airplanes that do not comply with this rule would be contrary to the intent of both § 121.153(c) and this rulemaking. It would also subject a certificate holder's passengers to differing levels of safety based on the registry of the airplane. This is not acceptable and we did not make the change proposed by the commenters in the final rule. However, as discussed later in more detail, we are working with foreign authorities to establish harmonized flammability reduction standards. If we achieve that objective, the ''burdens'' suggested by the commenters would disappear.

10. International Aspects of Production Requirements

The AEA and Airbus disagreed with the proposed requirement to incorporate FRM or IMM into all new production airplanes. They stated that existing procedures for exporting airplanes from the United States allow the importing country to accept specific non-compliances on the export certificate of airworthiness. The AEA also asked for clarification of the discussion of FAA authority over airplanes produced outside the United States. Likewise, Embraer asked that the requirement to incorporate FRM or IMM into all new production airplanes be dropped from the proposal. Embraer pointed out that foreign regulatory authorities do not currently have certification standards for FRM or IMM, so Embraer is unclear how airplanes with such systems would be approved by the importing country. The ATA questioned the FAA contention (by context) that the proposed rulemaking has no international (ICAO) implications. It asked for the proposal to be reviewed by relevant international law experts for compatibility with the principles of sovereignty and authority in ICAO International Standards and Recommended Practices, Annex 8 to the Convention on International Civil Aviation, Airworthiness of Aircraft.

As discussed in the NPRM, we intend for the proposed new production requirements to apply to any manufacturer over which the FAA has jurisdiction under ICAO Annex 8. For this reason, we used the same language as Annex 8 to define the applicability of those requirements. Under that annex (and under this rule), we have jurisdiction over organizations to which we issue production approvals, including production certificates. This may include organizations that accomplish final assembly outside the United States. While no affected U.S. production certificate holders currently accomplish final assembly outside the United States, it is possible that they might in the future. For example, if Boeing were to perform final assembly of a future version of the Boeing 737 in another country, those airplanes would still be subject to the production cut-in requirements of this final rule as long as Boeing produces them under Boeing's U.S. production certificate.

Regarding the comment that current procedures allow the importing country to accept specific non-compliances on the export certificate of airworthiness, the commenters are referring to the waiver provisions of § 21.327(e)(4). The non-compliances referenced in that section relate to the requirements for issuance of an export airworthiness approval.[19] The production cut-in requirement of this rule is unrelated to those requirements. Rather, it requires that affected airplanes produced under U.S. production approvals must conform to an approved type design that meets the fuel tank flammability requirements of this rule. Therefore, while a foreign authority may be able to waive the requirements for issuing airworthiness approvals, it does not have the authority under ICAO Annex 8 to override our requirements, imposed as the State of Manufacture, for our production approval holders.

Finally, in addition to meeting the requirements of this rule, any airplane produced for export would also have to meet all other requirements applicable to the production certificate holder (such as the requirement to maintain its quality control system in accordance with its FAA approval). These requirements cannot be waived under the provisions of § 21.327(e)(4). Therefore, we are not aware of any basis for a foreign authority to object to our requirement for production cut-in. Of course, once the airplane is placed into operation by a foreign operator, the operator would have to comply with the requirements of its authority for operation and maintenance of the airplane, which may or may not include requirements relating to fuel tank flammability. As discussed later in more detail, we are currently working with foreign authorities to harmonize our requirements with theirs.

D. Requirements for Manufacturers and Holders of Type Certificates, Supplemental Type Certificates and Field Approvals

1. General Comments About Design Approval Holder (DAH) Requirements

We received a number of general comments responding to the concept of DAH requirements rather than to the DAH requirements in this specific

[19] For example, § 21.327(e)(4) references § 21.329, which in turn references § 21.183 for the requirements for a standard U.S. airworthiness certificate. For new airplanes, § 21.183 requires that the product conform to its approved type design and is in condition for safe operation.

rulemaking. We responded to these types of comments in the comment disposition document accompanying our policy statement titled ''Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes.'' Both were published in the **Federal Register** on July 12, 2005 (70 FR 40168 AND 70 FR 40166, respectively). We received similar comments on our NPRM on Enhanced Airworthiness Program for Airplane Systems (70 FR 58508, October 6, 2005, RIN 2120–AI31). As a result, we will not respond to such comments again here.

2. Flammability Exposure Requirements for New Airplane Designs

As proposed, the rule requires those airplanes incorporating FRM to limit the fleet average flammability exposure to 3 percent, and to limit warm day exposure to 3 percent, for all normally emptied fuel tanks located, in whole or in part, in the fuselage. All other fuel tanks can either meet the 3 percent average flammability exposure limitation or have a flammability exposure that is not higher than the exposure in a conventional unheated aluminum wing tank that is cooled by exposure to ambient temperatures during flight.

a. General Comments About Applicability to New Production Airplanes

The NACA and its member airlines fully support the requirement for incorporation of either an FRM or IMM to provide fuel tank inerting for all new production airplanes, including those that already have an approved TC or STC. Airbus, AEA, AAPA, and EASA also commented that installation of FRM during an airplane manufacturing process may be appropriate. The EASA expressed its support for production cut-in and plans to amend its rules to a harmonized approach that requires production incorporation.

As we stated in the NPRM, ''The safety objective of these proposed rules is to have the required modifications installed and operational at the earliest opportunity.'' [20] For U.S.-manufactured airplanes, we proposed to meet this objective by requiring affected production approval holders to incorporate these changes by the compliance date for developing FRM or IMM service information. Recognizing that we do not have similar authority over affected foreign manufacturers, we did not propose a similar requirement for them. However, as noted by the commenters, our safety objective still applies to those airplanes, and it is equally feasible for FRM or IMM to be incorporated on new foreign-manufactured airplanes after the necessary design changes are developed. Further, as stated by EASA, it has agreed to harmonize requirements for new production airplanes. Including FRM or IMM in production is more efficient and less costly than retrofitting these airplanes, which is also required under the NPRM.

Based on these factors, we had assumed that FRM or IMM would be incorporated on all airplanes produced by both domestic and foreign manufacturers after designs were developed within two years after the effective date of this final rule. Given the reluctance of foreign manufacturers to commit to developing these design changes within the prescribed period (as discussed later), we now recognize that an operational requirement is needed to effectuate our intent. Accordingly, operators may not operate affected airplanes produced after September 20, 2010 unless they are equipped with FRM or IMM. Because we had intended that all airplanes delivered after these design changes had been developed would include these safety improvements, this requirement is a logical outgrowth of the NPRM.

b. Flammability Analysis Using the Monte Carlo Method

For all fuel tanks, an analysis must be performed to determine whether the fuel tank, as originally designed, meets the fleet average flammability exposure limits discussed above. To determine the flammability exposure of fuel tanks, the ARAC used a specific methodology incorporating a Monte Carlo analysis.[21] As proposed, any analysis of a fuel tank must be performed in accordance with this methodology (as detailed in proposed appendix L, now appendix N, and in the draft FAA document, Fuel Tank Flammability Assessment Method User's Manual).[22] We considered approving alternative methodologies in lieu of Appendix N, but we found that no other alternative considered all factors that influence fuel tank flammability exposure (which is the safety objective of this rule).

The ATA proposed upgrading the Monte Carlo method or developing a similar method that would be used to evaluate airplane risk of a fuel tank explosion. The method proposed by ATA would include not only fuel tank flammability, but also the risk of ignition sources developing in a fuel tank based upon the specific airplane design.

The Monte Carlo method is intended to be used to determine fuel tank flammability alone, not the overall likelihood of a fuel tank explosion. While the ATA's suggestion is intriguing, we do not believe there is presently a method of accurately predicting the risk of an ignition source developing in a fuel tank. With this final rule, we are implementing a balanced approach to prevent fuel tank explosions: By addressing both ignition prevention (as defined in the requirements of § 25.981(a) and SFAR 88) and flammability reduction (as defined in this rule). Compliance with both standards ensures that fuel tank explosion risk is acceptable.

The EASA also expressed concerns about the proposed methodology since it is complex and allows variations in fuel tank flammability to be introduced by variations in the input parameters used in the analysis. Although EASA welcomed the improvements to the Monte Carlo method proposed in the NPRM that set the majority of the input parameters, EASA expressed concern that the method does not adequately address heat transfer and the assumptions retained do not allow proper quantification of the exposure.

We share the concern expressed by EASA that, unless properly controlled, variation in the DAH input parameters used in the flammability assessment could result in significant differences between various DAHs. Fuel tank thermal modeling, including heat transfer, is the one major variable parameter provided by the user. Appendix N25.3(e) requires that substantiating data for the fuel tank thermal model, along with other input parameters, be submitted with the analysis. Therefore, we believe that Appendix N does adequately address heat transfer and provides a method that allows for proper quantification of flammability exposure.

Finally, Parker Hannifin Corporation noted an error in the Monte Carlo computer code that mistakenly added the time prior to flight and utilized the flight time constants rather than ground time constants in certain calculations. This error could produce two counter-

[20] 70 FR at 70940.

[21] This methodology determines the fuel tank flammability exposure for numerous simulated airplane flights during which various parameters such as ambient temperature, flight length, fuel flash point are randomly selected. The results of these simulations are averaged together to determine the fleet average fuel tank flammability exposure.

[22] As indicated in the proposed Appendix L (now Appendix N), we are incorporating the User's Manual by reference into the final rule. This was incorporated by reference in the final rule by creating a new § 25.5.

acting effects. In some circumstances, it could produce higher flammability exposure when the tank-full time constant is used longer than actually required. In other circumstances, it tends to reduce the flammability exposure by using the tank empty-time constant earlier than actually warranted. Overall this has the net effect of slightly underestimating the actual fuel tank flammability exposure so assessments using the revised computer code would produce slightly higher flammability values. We addressed this error in the final rule and the computer code is now correct.

c. Definition of ''Normally Emptied Tank''

As defined in proposed § 25.1803(d) (now § 26.31(b)), ''normally emptied tank'' refers to a fuel tank that is emptied of fuel during the course of a flight and, therefore, can contain a substantial vapor space during a significant portion of the airplane operating time. Boeing requested that the definition for ''normally emptied'' be removed. Boeing based this request on the fact that heat input to the tank and the heat rejection rate (i.e., the rate of heat transfer from the tank) play more of a factor in a tank's flammability than whether it is normally emptied.

While we acknowledge that the heat input to the fuel tank and heat rejection from the tank are major factors in fuel tank flammability, the reason we are concerned about tanks that are normally emptied is not related to their flammability. As stated in the preamble to the NPRM, normally emptied fuel tanks can contain a substantial fuel vapor space that could expose potential ignition sources to the fuel vapor for an extended period of time. Fuel in tanks that are not normally emptied covers potential ignition sources more often than fuel in normally emptied tanks. This prevents ignition sources from igniting fuel vapors in the tank. Therefore, normally emptied fuel tanks have a higher likelihood of exposing flammable vapor to ignition sources than tanks that are not normally emptied. This rule specifically differentiates between fuel tanks that are normally emptied and other fuel tanks by requiring reduced fuel tank flammability because of the increased risk of an explosion in normally emptied tanks.

d. Fixed Numerical Standard

For new airplane designs, we requested comments on whether the reference to a conventional unheated aluminum wing tank or a fixed numerical standard for the requirements of § 25.981(b) would be more workable and effective. The safety objective of a ''conventional unheated aluminum wing tank'' is consistent with the ARAC recommendation and § 25.981(c) (amendment 102). However, it does not provide a numerical standard to apply in future type certification programs. In certain cases, the compliance demonstration would be simplified if a fixed numerical standard were provided in the regulation, because there would be no analysis needed to establish the flammability exposure of a conventional unheated aluminum wing tank that is the alternative flammability exposure. We believe this approach has implementation advantages and should achieve the safety level intended by the ARAC recommendation and the current approach in § 25.981(c) (amendment 102).

Transport Canada, Boeing, Airbus, and ATA agreed that including a fixed numerical standard was preferred. Several of them suggested that we needed to provide further justification for the selection of a 3 percent fixed value and proposed different numerical values. These commenters did not agree with the inclusion of a variable standard of equivalence to a conventional unheated aluminum wing tank.

Airbus stated that a numerical value within the level recommended by ARAC (i.e., 7 percent) would be more practical and potentially safer than a flammability equivalency to a hypothetical wing fuel tank. While the 3 percent limit should be considered an acceptable goal if FRM is used, Airbus suggested that for fuel tanks that have a base flammability exposure less than 7 percent, there should not be a requirement to use FRM. The existing minimization of heat sources, as required by EASA, should be adequate. Airbus concluded that establishing a standard of 7 percent for fuel tank flammability exposure would ensure that FRM would provide a significant benefit (at least a 50 percent reduction in flammability) and remove the potential to actually reduce the overall safety as a result of increased ignition risk potential due to hazards associated with adding new FRM or IMM to the airplanes.

These commenters did not provide any compelling reasons to change the proposed 3 percent average flammability exposure or to eliminate the provision for showing equivalence to a conventional unheated aluminum wing tank. The reason for including the fixed 3 percent flammability exposure is to simplify the compliance demonstration. The reason for allowing for equivalence to a conventional unheated aluminum wing tank is to give flexibility to designers who are willing to perform the required evaluations. The proposal from Airbus and other commenters to increase the flammability exposure value to 7 percent would allow a significant increase in fuel tank flammability over that permitted by § 25.981. The fleet of airplanes that ARAC determined had achieved an acceptable level of safety was made up of airplanes with conventional unheated aluminum wing tanks with flammability exposures that varied from very low levels of around 1.5 percent for outboard wing fuel tanks to the highest values below 6 percent for some larger inboard wing tanks. These numerical values would all be lower if calculated today, consistent with the lower values now calculated by manufacturers for HCWTs.

Therefore, in this final rule, we adopted a flammability standard that includes showing a fuel tank is equivalent to a conventional unheated aluminum wing tank or 3 percent, whichever is greater. For purposes of this final rule, a conventional unheated aluminum wing tank is a conventional aluminum structure, integral tank of a subsonic transport airplane wing, with minimal heating from airplane systems or other fuel tanks and cooled by ambient airflow during flight. Heat sources that have the potential for significantly increasing the flammability exposure of a fuel tank would preclude the tank from being considered ''unheated.'' Examples of such heat sources that may have this effect are heat exchangers, adjacent heated fuel tanks, transfer of fuel from a warmer tank, and adjacent air conditioning equipment. Thermal anti-ice systems and thermal anti-ice blankets typically do not significantly increase flammability of fuel tanks.

e. Tanks Located Within the Fuselage Contour

Boeing disagreed with the distinction in proposed § 25.981 between tanks located within the fuselage contour that are normally emptied and other tanks. Boeing suggested that main tanks and tanks not partially within the fuselage do not represent all the tanks with low flammability exposure and acceptable safety records. Boeing stated that on the other hand it is possible to design a main or wing tank with exceptional heat sources and/or minimal cooling. It is also possible to design a normally emptied tank that is partially within the contour of the fuselage which is low flammability (3 percent or less).

Bombardier did not understand the justification for introducing a maximum

3 percent fuel tank flammability exposure for wing tanks with a portion of the tank located within the fuselage. Bombardier stated that there is an inconsistency in requiring wing tanks to have flammability exposure of between 2 percent and 5 percent, while requiring fuselage tanks to be below 3 percent. Bombardier concluded that keeping all tanks below a 7 percent flammability exposure level should be considered acceptable, and recommended that tanks with less than 7 percent flammability exposure not be required to have FRM.

The distinction in flammability exposures in the rule between tanks located within the fuselage contour that are normally emptied and other tanks was made because the former generally have an increased risk of explosion. The location within the fuselage typically results in little or no cooling of the tank and, in some cases, actually heats the tank. Tanks that are normally emptied operate much of the time empty. Therefore, components that could be potential ignition sources are exposed to the tank ullage. We agree with Boeing on the possibility that fuel tanks located in the wing can be high flammability if the tank is heated or does not cool due to tank design features. However, the rule limits fuel tank flammability in these tanks to 3 percent or equivalent to a conventional unheated aluminum wing tank, addressing that risk.

For fuel tanks located outside the fuselage contour, § 25.981, as amended by this final rule, retains the flammability limits 3 percent or equivalent to a conventional unheated aluminum wing tank. Only if any portion of the fuel tank is located within the fuselage contour, and if the tank is normally emptied, is it required to meet the 3 percent average and 3 percent warm day requirement. If an applicant chooses to locate a portion of a main fuel tank inside the fuselage, the rule requires that the fuel tank meet the same standard as a main fuel tank located solely outside of the fuselage contour (i.e., 3 percent or equivalent to a conventional unheated aluminum wing tank wing).

Since existing airplane types with main fuel tanks that go from the wing into the fuselage are not normally emptied, FRM or IMM is required for these tanks only if the tank flammability exposure exceeds 7 percent (proposed § 25.1815 (now § 26.33)). For future designs using similar architecture, these types of designs would need to show that the main tank that extends into the fuselage meets the standard of equivalent to a conventional unheated aluminum wing tank or 3 percent.

f. Compliance Demonstration

Boeing, Airbus, and BAE requested that applicants be allowed to use design review to determine that an aluminum fuel tank is equivalent to the low flammability standard fuel tank as defined by ARAC. This would be in lieu of a detailed Monte Carlo based flammability analysis. The BAE stated that performing a cumbersome and expensive Monte Carlo analysis for metallic wing tanks of conventional design is unnecessary and adds no value. For other types of tanks, or wing tanks with a substantial heat input, BAE believes the use of alternative analytical methods may be appropriate and suggested a qualitative assessment of the design and the installation should be adequate to determine whether a given tank has a low flammability exposure. Finally, BAE recommended a simple set of objective criteria be allowed for establishing fuel tank flammability in these tanks.

Boeing requested that we:

- Revise proposed § 25.981(b) to allow a simplified flammability analysis for fuel tanks shown by design review to be a Conventional Unheated Aluminum Wing Tank.
- Delete proposed § 25.981(b)(1) and (b)(2), which reference Appendixes N and M for the flammability analysis methodology and flammability exposure criteria, respectively.
- Revise the definition of conventional unheated aluminum wing tanks to consider allowing some minimal heat sources (i.e., hydraulic systems) and significant cooling which results in low flammability exposure and a satisfactory level of safety.

We agree with the commenters' assertion that a simplified qualitative flammability analysis for conventional unheated aluminum wing tanks is appropriate and have modified Appendix N to permit this. Our intent is to limit the quantitative analysis for aluminum wing tanks with unique or unconventional designs that are heated or designed such that minimal cooling occurs. For example, a quantitative flammability analysis would be necessary for a wing tank that has a relatively small surface area, thereby minimizing surface cooling effects, a composite tank or a tank that has equipment inducing heat into the fuel tank greater than a small amount.

We have also added guidance to AC 25.981–2 that describes how to conduct a qualitative analysis to establish equivalency to a conventional unheated aluminum wing tank. This guidance provides examples of allowable heat sources and cooling characteristics for a fuel tank to be considered a ''conventional unheated aluminum wing tank,'' so that the safety standard established by the ARAC definition for a conventional unheated aluminum wing tank is maintained. For compliance with § 25.981(d), the guidance also includes a discussion of how Critical Design Configuration Control Limitations (CDCCL) would need to be developed to define any critical features of the fuel tank design needed to limit the flammability to that of a conventional unheated aluminum wing tank.

As for Boeing's specific changes to § 25.981, we do not agree that § 25.981(b)(1) and (b)(2) should be deleted because Appendix N provides necessary definitions and methods for establishing Fleet Average Flammability Exposure and Appendix M establishes performance standards for FRM. These appendices, and the references to them in § 25.981(b)(1) and (b)(2), are necessary to achieve the safety objectives of this rulemaking. We have not adopted Boeing's suggestion to modify the definition of ''Equivalent Conventional Unheated Aluminum Wing.'' However, we do agree with the comment to allow some minimal heating of tanks such as that from a hydraulic heat exchanger that does minimal heating. We have revised the term ''Conventional Unheated Aluminum Wing'' used in § 25.981 to ''Conventional Unheated Aluminum Wing Tank'' to clarify that the flammability of the fuel tank is the standard. Since some minimal degree of heating typically occurs in many of these tanks, this change recognizes that such minimal heating is permissible.

g. Heat Sources Located in or Near Fuel Tanks

Transport Canada and the UK Air Safety Group suggested we prohibit the placement of heat sources within or near fuel tanks. Transport Canada questioned why we would allow such an undesirable design practice to continue. The UK Air Safety Group contended the NPRM failed to address the contribution of high fuel tank temperature to fuel tank explosions. The commenter noted that the Boeing 737 and 747 have air conditioning units that raise the fuel tanks' temperature well above the outside ambient temperature because these units are located beneath the center fuel tanks.

We agree with the commenters' underlying concern about controlling fuel tank temperature. While locating heat sources in or near fuel tanks increases the tanks' flammability, specifically prohibiting this design

practice may not be the most efficient and effective way to address the problem. This rule is performance-based and is seeking innovative design solutions which could permit locating heat sources near or in fuel tanks. For example, designers may wish to develop an FRM based upon managing the fuel tank temperature by transferring heat between tanks. These designs may provide flammability exposures well below that of a tank that complied with the proposal made by the commenters. Risk is directly proportionate to the flammability exposure of a tank. Therefore, we have developed a flammability performance standard that is independent of the design details of a tank installation.

h. Effects of Systems Failures on Flammability

The CAPA requested that we ensure the effects of any system failures that might increase the fuel tank flammability above the acceptable limit be considered and properly evaluated prior to issuing the final rule.

The flammability analysis required by § 25.981 includes a requirement to show that flammability exposure does not exceed minimum levels. It also requires that the overall flammability exposure analysis includes consideration of system failures when demonstrating that the FRM meets the reliability requirements of this rule. In addition, the analysis required by § 25.981(d) that determines the CDCCL and airworthiness limitations includes consideration of possible critical design features that must be maintained and may not be altered to assure the flammability limits are achieved. We have provided additional guidance and clarification in AC 25.981–2 regarding reliability assessments and establishing CDCCL and airworthiness limitations for FRM and IMM. Accordingly, we believe the commenter's concerns are already addressed by the proposed language, and no change was made to the final rule.

i. Move Flammability Exposure Method to Advisory Circular

The EASA, Transport Canada, Boeing, and Bombardier commented that the Monte Carlo method should not be defined in the rule as the method for determining fuel tank flammability. Instead, it would be more appropriately included in advisory material.

We do not agree with these commenters. The Monte Carlo method is specified in the rule to ensure standardization of the methodology for determining fuel tank flammability across all airplane models so a uniform level of safety is achieved. Advisory circulars (ACs) provide guidance for methods, procedures, or practices that are acceptable to us for complying with regulations. ACs are only one means of demonstrating compliance, and we cannot require their use. Specifying Monte Carlo analysis in an AC could result in numerous methodologies and input parameters being used to determine flammability exposure, and we believe that this could result in differing flammability exposures in the fleet that may allow some fuel tanks to have greater flammability than intended by the rule. To ensure that all DAHs reach comparable conclusions from their assessments, it is necessary to require that they use the same methodology. This can only be accomplished through the rulemaking process.

However, to accommodate minor revisions that would not appreciably affect analytical results, we have included a provision in Appendix N25.1(c) permitting use of alternative methods if approved by the FAA. This is similar to the flexibility provided in § 25.853 for alternative test methods to those defined in Appendix F of part 25.

3. Flammability Exposure Requirements for Current Airplane Designs

Proposed § 25.1821 (now § 26.39) contains the fuel tank flammability safety requirements for newly produced airplanes. Paragraph (b) sets forth the criteria that, when met by any fuel tank, requires that fuel tank to have an FRM or IMM meeting the new requirements of § 25.981. Paragraph (c) contains the requirements for all other fuel tanks that exceed a Fleet Average Flammability Exposure of 7 percent.

a. Same Standards for New and Current Airplane Designs

Boeing asked that we revise proposed § 25.1821(b) to state ''any fuel tank not shown by design review to be a Conventional Unheated Aluminum Wing Tank, must meet the requirements of § 25.981 in effect on [effective date of final rule].'' In conjunction with this change, paragraph (c) would be deleted. Boeing stated that new production airplanes should meet the same requirements as new airplane designs, since the criteria for tanks at risk should be a function of heating and cooling, not whether the fuel tank is normally emptied and located partially within the fuselage.

We do not agree with Boeing. As discussed earlier, tanks that are normally emptied and located at least partially within the fuselage are generally more susceptible to explosion because of both increased ullage and operating at higher temperatures. We have determined that the 7 percent flammability exposure limit recommended by ARAC is an adequate standard to determine which fuel tanks in newly produced airplanes need an FRM or IMM. If the fleet average flammability exposure is above 7 percent for fuel tanks normally emptied and located within the fuselage contour, these fuel tanks will be required to be flammable no more than 3 percent on average and 3 percent for warm day operations. We expect that the vast majority of large transport category airplanes will have a fleet average flammability exposure above 7 percent for these specific fuel tanks and will be required to comply with § 25.981 for production airplanes affected by the DAH requirement.

Other tanks on newly produced airplanes also may not exceed the 7 percent flammability exposure limit, but the final rule would allow reduction to that level by various methods of FRM described in AC 25.981–2 that would not necessarily require the added complexity and cost of a nitrogen inerting based FRM. We believe this requirement is sufficient to provide an acceptable level of safety for current production airplanes because these tanks have significantly lower risk of fuel tank explosions, as demonstrated by their service history. Therefore, we do not believe the safety improvements from redesign of these tanks to meet the new requirements of § 25.981 are sufficient to justify the resulting costs.

b. 7 Percent Exposure Flammability Questioned

In the NPRM, we stated that fuel tanks that have a flammability exposure higher than 7 percent are unduly dangerous. American Trans Air commented that this statement is arbitrary, based on flawed analysis, and cannot be supported. Bombardier expressed its opinion that the NPRM and its supporting data did not adequately substantiate the declared 7 percent exposure. Although Bombardier considered that achieving 7 percent exposure is feasible with reasonable design precautions, Bombardier stated that this is not an acceptable reason for creating a standard. Bombardier also quoted information shared among the airline industry and authorities that heated tanks may vary between 8 percent to as high as 40 percent in flammability exposure.

Boeing did not agree with the proposed flammability requirements for newly produced airplanes, because fuel tanks other than those located within

the fuselage contour that are normally emptied would be allowed to have flammability of up to 7 percent. Boeing commented that this flammability is more than twice that of what is allowed for similar tanks in new designs. Boeing noted that the first ARAC determination that 7 percent flammability exposure is acceptable was based on the original coarse ARAC flammability analysis which determined that unheated tanks had a flammability level of approximately 5 percent. Two percent was added for potential variation resulting in the 7 percent proposal. Boeing pointed out that the Monte Carlo analysis has been significantly refined since the first ARAC report, and the estimated flammability exposure of 5 percent (7 percent with potential variation) has been reduced to be in the range of 3 percent (4 percent with potential variation) or less for the same fuel tanks.

We have determined that the 7 percent or less fleet average flammability exposure recommended by ARAC is an adequate value that can be used to identify those airplane models that need to be retrofitted with an FRM or IMM. The fuel tank flammability limits established for newly produced airplanes (subject to the production cut-in requirements) are the same as those for retrofit of the existing fleet (proposed § 25.1815 (now § 26.33)). We determined this flammability exposure achieves the desired safety benefits, since currently produced airplanes generally have conventional unheated aluminum wing tanks, the tanks ARAC determined to have adequate safety level, with flammability exposures below 7 percent.

We agree with Boeing that newly produced airplanes should not be allowed to have fuel tank flammability that is twice that of new designs, and this is not what we intended. The intent of this rule is to apply its safety improvements to the fuel tanks that have been shown to have an increased risk of explosion, not to require modifications to conventional unheated aluminum wing tanks, or other fuel tanks that have significantly lower flammability. Data we have available for currently produced airplanes indicate the flammability of tanks located outside the fuselage contour have flammability below 7 percent and further reduction in flammability exposure as recommended by Boeing would add significant cost to the rule, since a number of fuel tanks would be required to have an FRM or IMM to meet the suggested flammability values of 3 to 4 percent.

Recognizing that, based on the applicability criteria of proposed § 25.1821(a) (now § 26.39), this section only applies to current production Boeing models. We have revised paragraph (a) to specifically identify those models. As discussed previously, we have also added a requirement to the operational rules that operators must meet these requirements for any airplane subject to this rule that is produced more than two years after the effective date.

4. Continued Airworthiness and Safety Improvements

a. 7 Percent Standard Should Apply to All Tanks

Boeing requested that § 25.1815(c)(1) be modified to state that, for fuel tanks with flammability exposure exceeding 7 percent that require an FRM, ''a means must be provided to reduce the fuel tank flammability exposure to meet the criteria of Appendix M of this part.'' In addition, Boeing recommended that we delete § 25.1815(c)(1)(i) and (ii). Boeing stated that any fuel tank that has significant heat loads, regardless of the location on the airplane, should meet the requirements of Appendix M if an FRM is selected as the design modification.

We do not concur with Boeing's comment that the flammability requirements of Appendix M should apply to any fuel tank that exceeds 7 percent average flammability. As discussed previously, the reason we are adopting more stringent requirements for fuel tanks that are normally emptied and located within the fuselage contour is that those tanks both have higher flammability exposure and are more likely to have ullage exposed to ignition sources. For other fuel tanks where the fleet average flammability exposure exceeds 7 percent, the requirements of Appendix M apply with the exception that the flammability requirements of M25.1(a) and (b) are replaced by the requirement that fleet average flammability exposure must not exceed 7 percent. We believe this is acceptable for these tanks on existing airplanes. Since most of these tanks are not ''normally emptied,'' the risk that flammable vapors will be exposed to ignition sources is generally much lower.

b. Compliance Planning

Airbus requested that the compliance planning requirements contained in § 25.1815 be removed because they are unnecessary. Airbus believes the only important compliance date is the final date for DAHs to submit the data and documents necessary to support operator compliance. Airbus commented that the compliance plan requirements in §§ 25.1815(g), (h) and (i) add constraints on the manufacturer with no safety benefit. Airbus stated these documents should not be subject to a requirement with respect to the DAH documentation delivery date. However, if the delivery dates for these documents are mandated, Airbus requested that they be expressed in the format of a duration tied to the date of approval of the previous submittal.

Boeing recommended we remove the § 25.1815(g)(3) requirement to identify deviations to methods of compliance identified in FAA advisory material, because the proposed means of compliance should not be compared to other means. Instead, they should be evaluated on their own merits.

While we understand the commenters' concerns, these documents will provide assurance that the required flammability exposure analyses and, if applicable, proposed design changes, are being addressed in a timely fashion. As stated in the NPRM, the resolution of fuel tank safety issues needs to be handled in a ''uniform and expeditious'' manner. Providing compliance times based on the dates of our previous approvals would result in various compliance times, depending upon whether DAHs' submissions are acceptable. It would have the undesirable effect of providing more time for those manufacturers submitting deficient documents.

Compliance planning will promote communication between the affected manufacturer and us. It will also provide sufficient time to discuss any concerns with respect to how the affected manufacturer proposes to analyze fleet average flammability exposure or certify design changes. Compliance planning will also help to ensure that the affected manufacturer is able to meet the required compliance times of the rule for accomplishing the submittal of the flammability exposure analysis, design changes, and service instructions, if applicable (proposed § 25.1815 (now § 26.33) and proposed § 25.1817 (now § 26.35)). We intend to closely monitor compliance status and take appropriate action, if necessary.

However, we do acknowledge that some provisions of proposed § 25.1815(g), (h) and (i) could be removed without adversely affecting our ability to facilitate TC holder compliance. Specifically, proposed paragraph (g)(3) would require TC holders to identify intended means of compliance that differ from those described in FAA advisory materials.

While this is still a desirable element of any compliance plan, we now believe that an explicit requirement is unnecessary and it is not included in the final rule. As with normal type certification planning, we expect that TC holders will identify differences and fully discuss them with the FAA Oversight Office early in the compliance period to ensure that these differences will ultimately not jeopardize full and timely compliance. Because we believe that timely review and approval is beneficial and will save both DAH and FAA resources, the advisory material will recommend that if the DAH proposes a compliance means differing from that described in the advisory material, the DAH should provide a detailed explanation of how it will demonstrate compliance with this section. The FAA Oversight Office will evaluate these differences on their merits, and not by comparison with FAA advisory material.

Similarly, proposed § 25.1815(i) contains provisions that would have authorized the FAA Oversight Office to identify deficiencies in a compliance plan, or the TC holder's implementation of the plan, and require specified corrective actions to remedy those deficiencies. While we anticipate that this process will still occur in the event of potential non-compliance, we have concluded that it is unnecessary to adopt explicit requirements to correct deficiencies and have removed them from the final rule. Ultimately, TC holders are responsible for submitting compliant FRM or IMM by the date specified. This section retains the requirements to submit a compliance plan and to implement the approved plan. If the FAA Oversight Office determines that the TC holder is at risk of not submitting compliant FRM or IMM by the compliance date because of deficiencies in either the compliance plan or the TC holder's implementation of the plan, the FAA Oversight Office will document the deficiencies and request TC holder corrective action. Failure to implement proper corrective action under these circumstances, while not constituting a separate violation, will be considered in determining appropriate enforcement action if the TC holder ultimately fails to meet the requirements of this section.

Finally, we realized that the rule text could more clearly state our intent to allow DAHs flexibility to modify their approved plan if necessary. Accordingly, we changed proposed § 25.1815 (now § 26.33(i)) to read: ''Each affected type certificate holder must implement the compliance plans, or later revisions, * * *''

c. Changes to Type Certificates Affecting Flammability

Proposed § 25.1817 (now § 26.35) addressed changes to TCs that could affect fuel tank flammability. This section proposed to require that a flammability exposure analysis be accomplished in accordance with Appendix N for all affected fuel tanks installed under an STC, amended TC, or field approval within 12 months after the effective date of the final rule. An impact assessment that identifies any features of the design change that compromise any CDCCL applicable to any airplane with high flammability tanks for which CDCCL are required must also be submitted to the FAA Oversight Office. This section also proposed a requirement to develop service instructions to correct designs that compromise airworthiness limitations, defined by the TC holder under proposed § 25.1815 (now § 26.33), within 48 months after the final rule's effective date.

Airbus proposed we restrict the application of any proposed changes to § 25.981 to new TCs and significant design changes (i.e., new fuel tanks). For minor design changes such as relocating a fuel level sensor or a small increase in tank capacity, the TC holder should only be required to show no degradation in the flammability under the criteria proposed by § 25.1815. Airbus stated that the cross-reference between what is in the preamble and § 25.1815, and what is required by § 25.1817, is misleading.

We agree with Airbus, and have revised proposed § 25.1817 (now § 26.35) to require compliance with the new § 25.981 only for new fuel tanks. Other design changes that increase capacity of existing fuel tanks must comply with § 26.33. Design changes that affect the flammability exposure of existing tanks equipped with FRM or IMM must comply with CDCCLs for those tanks. This will ensure that these design changes do not degrade the level of safety required by this rule.

d. Combine §§ 25.1815 and 25.1817

Boeing requested that we combine proposed §§ 25.1815 and 25.1817 into one section. We do not agree with this suggestion, since it would not achieve the goals of this rulemaking. As proposed, §§ 25.1815 (now § 26.33) and 25.1817 (now § 26.35) would apply to different entities. Section 25.1815 (now § 26.33) would apply to TC holders of transport category airplanes, and § 25.1817 (now § 26.35) to auxiliary tank STC holders and future applicants for design changes. The STC holders have distinctly different compliance dates because information such as CDCCL developed by the DAHs under proposed § 25.1815 (now § 26.33) is needed before the STC holders can comply with proposed § 25.1817 (now § 26.35). Separate sections provide a clear statement of the requirements for each situation so affected persons can more easily understand what is needed to comply with the rules applicable to them. Therefore, the final rule retains the language as proposed with no change.

e. Pending Type Certification Projects

Proposed § 25.1819 contains the requirements for pending TC projects. As proposed, this section contains different requirements for those transport category airplanes based on whether the application was made before or on/after June 6, 2001 (the effective date of Amendment 25–102). Boeing requested that this section be deleted because it saw no reason to differentiate among designs based on the date of application.

We partially agree with Boeing and have revised this section. In the final rule, any pending certification projects that have not received type certification by the effective date of this rule will be required to meet the requirements of § 25.981, as amended by this rule. Since there are no longer any ongoing TC projects where the application was received prior to June 6, 2001, there is no reason for this distinction and we have removed proposed § 25.1819(c). However, we have received applications for type certification projects after June 6, 2001, that are still pending (e.g., the Boeing 787 and Airbus A350), and we have determined that a specific requirement in § 25.1819 is needed to address these projects. We do not believe this section should be completely deleted, as requested, because these projects (and future design changes to these airplanes), would not otherwise be required to comply with § 25.981, as amended by this final rule. The change to the rule will maintain the requirement that pending projects meet the same flammability standards as required for new type certificates and that applicants develop CDCCL as proposed in the NPRM.

f. Type Certificates Applied for on or After June 6, 2001

Proposed § 25.1819(d) (now § 26.37(b)) requires that if an application for type certification was made on or after June 6, 2001, the requirements of § 25.981 of this rule apply. Section 25.981 requires, in part, that the fleet average flammability exposure of a fuel

tank not exceed 3 percent or that of a conventional unheated aluminum wing tank.

Airbus objected to the setting of a 3 percent flammability limit for all fuel tanks for a pending type certification, if the application was made on or after June 6, 2001. Airbus agreed that a 3 percent flammability limit could be considered as an acceptable goal when FRM is used. However, for fuel tanks that have a base flammability exposure less than 7 percent, there should not be a requirement to impose FRM, and the existing minimization of heat sources should be considered adequate. If initial flammability is between 3 and 7 percent, the safety benefit to reduce it to 3 percent through the use of FRM is not justified, when considering the introduction of new failure conditions, and operational and ownership costs of an FRM.

Airbus apparently misunderstood the effect of the proposed requirements of § 25.1819 (now § 26.37) for TCs for which application was made on or after June 6, 2001. The following is provided to clarify the requirements of the rule and address the concern expressed by Airbus. The flammability requirements for an airplane for which application was made on or after June 6, 2001, would include § 25.981 at Amendment 25–102 for all tanks except normally emptied tanks located within the fuselage contour. As stated earlier in this preamble, the rule text has been changed to clarify that the flammability exposure is equivalent to a conventional unheated aluminum wing tank or 3 percent, at the applicant's option. This flammability exposure is unchanged from Amendment 25–102, which would not have permitted a flammability exposure of 7 percent. This rule adds a new requirement for fuel tanks located within the fuselage contour that are normally emptied. Normally emptied tanks located within the fuselage must meet the 3 percent average and the 3 percent warm day flammability limits defined in Appendix M, which is the same flammability requirement being applied to these types of fuel tanks on existing airplanes.

g. Design Change to Add a Normally Emptied or Auxiliary Fuel Tank

As proposed, § 25.1819(e) would require that any future design change to a TC for which the application is pending when this rule is adopted and that—

- Adds an auxiliary fuel tank, or
- Adds a fuel tank designed to be normally emptied, or
- Increases fuel tank capacity, or
- May increase the flammability exposure of an existing fuel tank must meet the requirements of § 25.981, as amended by this rule. Boeing asked that this paragraph be deleted because it is specifically for ''pending'' type certification projects and, by definition, there is no existing type certificate to change. If the intent of proposed § 25.1819 (now § 26.37) is to define requirements for projects in work at the time of the final rule, then Boeing suggested there is no need for this section. Any change after the new production compliance date would have to meet the new production requirements (§ 25.1821).

Proposed § 25.1819(e) specifically targets potential future changes to certain long-term, pending type certification programs. Under proposed § 25.1819(c), these programs would not be required to comply with § 25.981, as amended by this rule. Our intent was that, although the original TC would not have to comply with the current requirements, any later changes would have to comply. Since we issued the NPRM, all of these projects have been certified, so there are no pending projects for which this paragraph is needed. Therefore, we have removed it from the final rule.

E. Flammability Exposure Requirements for Airplane Operators

The proposed operating rules would prohibit the operation of certain transport category airplanes operated under parts 91, 121, 125, and 129 beyond specified compliance dates, unless the operator of those airplanes has incorporated approved IMM, FRM or FIMM modifications and associated airworthiness limitations for the affected fuel tanks. The proposed rules would not apply to airplanes used only in all-cargo or part 135 operations. Finally, the proposed operating rules would also create new subparts that pertain to the support of continued airworthiness and safety improvements.

1. General Comments About Applicability to Existing Airplanes

Airbus, AEA and AAPA believe the retrofit requirement is not cost effective. Our analysis showed that the benefit/cost ratio of the production cut-in and retrofit requirements are similar. This was our rationale for adopting the combined approach of production cut-in and retrofit. However, these commenters believe the 7 percent discount rate used in our cost/benefit analysis is too high and is responsible for the determination that cost/benefit ratios are similar between the production cut-in and retrofit. We infer from their comments that they believe that 3 percent is a more realistic number and supports their contention that retrofit is not justified. The commenters note that an EASA analysis concluded that the retrofit was not justified. A major concern was that the bulk of the retrofit costs (present value terms) will be incurred in about 1/3 of the time (7 years) required for the forward fit costs (22 years). They believe that the cash outlay to retrofit in such a short time, coupled with the small safety benefit, is not justified when compared with the cost/benefit of the production cut-in. They also stated that the high cost of the retrofit over such a short period would place financial stress on an industry that is already financially constrained. In contrast, the cost of production incorporation of FRM in new airplanes will be borne by airlines that are prepared to accept the cost of new airplanes with the FRM included in the ''sticker price.''

Except as discussed previously regarding the exclusion of part 91 operations, we continue to believe that a retrofit requirement is justified. As discussed in the NPRM and earlier in this preamble, the risk of fuel tank explosions on the current fleet of airplanes with high flammability tanks is still significant because, despite our efforts to eliminate ignition sources, they continue to occur. At the same time, we have made a number of changes to the proposed requirements to reduce their cost and improve their cost-effectiveness. As discussed later in this preamble, the final regulatory evaluation (FRE) has been revised to include the benefits of preventing lost revenue to the industry as a whole if another fuel tank explosion were to occur. When these benefits are included, variations in the discount rate do not alter the conclusion that this rule is reasonably cost-effective.

The compliance time for the retrofit requirement allows for incorporation of design modifications over a seven-year period. Operators can spread the costs over this time period. We have also included a provision in the operational rules (discussed later) that allows operators an extension of up to one year after the 50 percent and 100 percent retrofit deadlines for full fleet incorporation of the design modifications if the operator includes requirements in their operations specifications to use ground conditioned air when available. For 50 percent of an operator's fleet, this would allow retrofit to be completed by September 21, 2015 rather than September 19, 2014. Similarly, for 100 percent of an operator's fleet, this would allow retrofit to be completed by

September 19, 2018 rather than September 19, 2017. This provision provides a reduction in the costs to operators because it allows an additional year to install an FRM or IMM. We also adjusted the applicability of the rule so that older airplanes that were produced prior to 1992, which will be nearing the end of their useful life in passenger service, will not be subject to the phase-in-requirement of the rule. The DAH-supported design modifications will only be required on airplanes with significant remaining useful life in passenger service so the benefits of the rule are optimized.

As for the comments on the standard discount rate, the rate that is mandated by the Office of Management and Budget when conducting regulatory evaluations is 7 percent. The Initial Regulatory Evaluation included a sensitivity study where variations in the discount rate (using 3 and 7 percent) were considered. Variations in the discount rate affect both the cost and the benefits of the rulemaking. Thus, using a discount rate of 3 percent (as they recommend) increases the benefits of the rulemaking, because the value of averted future accidents would also have a higher present value.

2. Authority to Operate With an Inoperative FRM, IMM or FIMM

In the NPRM, we requested public comment on the proposal to allow the current Flight Operations Evaluation Board (FOEB) process to establish the Master Minimum Equipment List (MMEL) interval for the FRM or IMM rather than requiring a specific maximum fixed time interval that the FRM can be inoperative. Airbus, Boeing, ATA, AEA and British Airways supported the rule as proposed and generally agreed the FOEB is the appropriate vehicle to establish the approved MMEL interval for inoperative FRM. In contrast, Smith's Aero commented that FRM must be considered a flight critical system, without MMEL relief for the performance of the system to meet the overall intended safety level stated by the FAA in the NPRM. Finally, Frontier asked how long an airplane could be operated with an inoperative FRM system.

As stated in the NPRM, the intent of the rule is to provide an additional layer of protection from having a fuel tank explosion if an ignition source occurs inside a fuel tank. While the FRM system is needed to maintain the safety of a fleet of airplanes, it is not considered flight critical for every flight, since the ignition prevention means required by § 25.981 requires robust fail-safe features that provide an adequate level of safety during short periods of time when the FRM is inoperative under the MMEL (no greater than 1.8 percent of the operating time). We agree with the commenters that ''FRM designers'' should make the design goals for the MMEL relief intervals available and notify the FOEB of their recommendation. The allowable MMEL interval is design dependent and cannot be defined by us until a design is presented and the interval is justified by the system reliability analysis and the FOEB.

Frontier also asked whether en route weather conditions would be a factor with the MEL. At this time, en route weather conditions are not part of the consideration for operation under the operator's MEL. This is one of the considerations in the Monte Carlo assessment, so operation under an operator's MEL during warm days would not be an additional consideration for the MMEL.

3. Availability of Spare Parts

Frontier asked if we had given proper consideration to the fact that there will most likely be an initial spare parts shortage. The compliance time for fleet-wide retrofit of FRM or IMM is nine years after the effective date of this final rule, with 50 percent compliance required within 6 years. Therefore, the manufacturers of components should have the capability to produce needed spares and no shortage of parts is anticipated. We have not included a consideration of parts shortages when establishing the MMEL interval.

4. Requirement That Center Fuel Tank Be Inert Before First Flight of the Day

Frontier requested information on whether the final rule would require that the center fuel tank be inert before the first flight of the day and, if so, if the Auxiliary Power Unit is inoperative, could the inerting system then be inoperative until after main engine start. The final rule does not directly address the operational details of the FRM. These will be determined based on the DAH's design and any operating limitations that may be necessary to meet the performance standards of this final rule.

F. Appendix M—FRM Specifications

Appendix M to part 25 contains detailed specifications for all FRMs if they are used to meet the flammability exposure limitations. These specifications are designed to ensure the performance and reliability of FRMs. We received several comments on Appendix M and have made changes to the rule based on some of them.

1. Fleet Average Flammability Exposure Level

Paragraph M25.1(a) requires that the Fleet Average Flammability Exposure of each fuel tank may not exceed 3 percent of the Flammability Exposure Evaluation Time. As discussed previously, as a portion of this 3 percent, if flammability reduction means (FRM) are used, each of the following time periods cannot exceed 1.8 percent of the FEET: (1) When any FRM is operational but the fuel tank is not inert and the tank is flammable; and (2) when any FRM is inoperative and the tank is flammable. Boeing requested a change to this paragraph to clarify that, for both the operational and inoperative requirements, only time periods when the fuel tank is in a flammable state are counted toward each 1.8 percent flammability exposure limit.

We agree that the method of determining these times needs clarification and we have revised paragraph M25.1(a) as requested by Boeing.

2. Inclusion of Ground and Takeoff/Climb Phases of Flight

Paragraph M25.1(b) requires that ground, takeoff and climb phases of flight be included in the fuel tank fleet average flammability exposure analysis. Boeing asked that paragraph M25.1(b) be reworded to exclude a specific reference to the takeoff flight phase. Boeing's justification was that there is no benefit in conducting a separate flammability analysis for the takeoff phase of flight since it is a very short duration. Boeing recommended the takeoff phase be included with the climb phase of flight. Boeing also suggested the rule clarify that the transition from ground to climb phase for this analysis occurs at weight off wheels.

We agree with Boeing and have revised paragraph M25.1(b) in the final rule to remove consideration of the takeoff phase of flight as a separate requirement. These two phases are now required to be considered in combination using the term ''takeoff/climb'' phase. In addition, we added a sentence to paragraph M25.1(b)(2) stating that the transition from ground to takeoff/climb phase for this analysis occurs at weight off wheels.

3. Clarification of Sea Level Ground Ambient Temperature

Paragraph M25.1(b)(1) requires that the fuel tank fleet average flammability

exposure analysis, as defined in Appendix N, ''must use the subset of flights starting with a sea level ground ambient temperature of 80°F. (standard day plus 21°F. atmosphere) or more, from the flammability exposure analysis done for overall performance.'' An individual commenter requested that we define the term ''more'' in this statement. We agree that this requirement needs clarification and, in the final rule, paragraph M25.1(b)(1), we replaced the word ''more'' with the word ''above.'' We also replaced the word ''starting'' with ''that begin.''

4. Deletion of Proposed Paragraph M25.2 (Showing Compliance)

Paragraph M25.2 establishes the means for showing compliance with fuel tank flammability requirements. Boeing requested the contents of paragraph M25.2 be moved to Advisory Circular 25.981–2A as it defines a method of compliance and, as such, should be located in an AC.

As discussed previously, ACs provide guidance for methods, procedures, or practices that are acceptable to us for complying with regulations. ACs are only one means of demonstrating compliance, and we cannot require their use. The compliance means in paragraph M25.2 is regulatory in nature to ensure that applicants are providing the data necessary to validate the parameters used in their calculations for fuel tank fleet average flammability exposure (as required by paragraph M25.1), and to substantiate that their system meets these requirements during normal airplane operations for any combination of airplane configuration (as required by paragraph M25.2(b)). We have made no change as a result of this comment.

5. Deletion of ''Fuel Type'' From List of Requirements in Proposed Paragraph M25.2(b)

Boeing also requested that paragraph M25.2(b) be revised to remove ''fuel type'' from the list of requirements and add ''or other relevant airplane system configuration'' to it. Boeing stated the items listed in paragraph M25.2(b) affect the performance of a FRM system that is supplied by engine bleed air, and fuel type does not affect bleed system pressure. We agree with Boeing and have revised this paragraph in the final rule.

6. Latent Failures

Paragraph M25.3(a) requires that reliability indications be provided to identify latent failures of the FRM. These indications are needed to ensure appropriate actions can be taken to maintain the FRM's reliability. An individual commenter asked that we define what is meant by ''reliability indications'' in paragraph M25.3.

In this context, reliability indications are normally computer messages or lights that identify whether components are functioning properly. Reliability indications are likely to be needed for the FRM to meet the reliability requirements in the rule. The type of indications needed will depend on the design and the outcome of the reliability analysis. If a nitrogen inerting FRM were to be developed with no indication of system failures, the system would have significant exposure to long-term operation with latent failures. Maintenance indications would likely be needed so that the minimum reliability of the system could meet the rule.

Boeing requested that paragraph M25.3 be deleted or modified to remove the term ''latent.'' This would be consistent with the special conditions issued for the Boeing 737 and 747 flammability reduction systems. In addition, the term ''latent'' would not be applicable if an indication is provided. An individual commenter agreed, stating that latent failures are not detectable and, hence, cannot be indicated. Embraer commented that both paragraphs M25.3(a) and (b) should be deleted because a literal interpretation would require any latent failure to be detected and indicated. This contradicts the NPRM's preamble, which states that the designer is allowed to make a trade-off between system failure probability and failure detection/annunciation to show compliance with the system performance requirements. In addition, Embraer maintained that paragraph M25.3(a) is already addressed and should not be repeated here because the requirement for failure detection is inherent in the flammability exposure requirement and in the 1.8 percent limit on system failure contribution to flammability exposure.

On a related topic, Airbus and Embraer commented that the proposed rule is too restrictive and mandates an excessive amount of indication and monitoring. Airbus indicated that the proposed text appears to assume the adoption of an active system to reduce flammability and this may not necessarily be appropriate if a passive system were to be used. Some means of verifying that the passive means is fully functional could be required, but it may be inherent in the design and therefore, no specific action would be required except to ensure that other airplane modifications do not adversely affect the fuel tank flammability.

The FAA agrees with these commenters and has modified paragraph M25.3(a) in the final rule.

This change makes it clear that the intent of the rule is to require only those indications needed to assure any FRM meets the minimum reliability requirements of the rule. The preamble to the NPRM provided a detailed explanation of the intent of these requirements. The need for indications is determined from the system reliability assessment that requires a minimum reliability for any FRM. The type of indications that may be needed to meet the reliability requirements depends upon the details of the design and the outcome of the system reliability analysis. Various design methods may be used to make sure an FRM meets the reliability and performance requirements in this rule. For example, if an FRM based upon nitrogen inerting is developed and no indication of system failures is provided, the system would have significant exposure to long-term operation with latent failures. Maintenance indications would likely be needed so that the minimum reliability of the system could meet the rule. Other designs may use active or passive cooling means for flammability reduction. For these systems, the level of indication required would depend upon the reliability of the cooling system components.

The need for FRM indications and the frequency of checking system performance (maintenance intervals) must be determined based on the results of the FRM fuel tank fleet average flammability exposure analysis. The determination of a proper maintenance interval and procedure will follow completion of the certification testing and the reliability analysis used to establish the system complies with the performance requirements.

7. Identification of Airworthiness Limitations

Paragraph M25.4(a) requires that if FRM is used to comply with paragraph M25.1, airworthiness limitations must be identified for all maintenance or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraph M25.1. Boeing requested that paragraph M25.4(a) be modified to require only airworthiness limitations be identified for ''significant'' maintenance or inspection tasks. Boeing stated that it is overly restrictive to require that all maintenance tasks be identified as airworthiness limitations. It argued that applicants should be granted the flexibility to identify significant tasks as

airworthiness limitations and other non-significant tasks as maintenance significant items.

We agree with Boeing that we should not require that all maintenance tasks for FRM be identified as airworthiness limitations. Airworthiness limitations for the FRM system are only required for those FRM components that, in the event of failure, would affect the ability of the fuel tank to meet the Fleet Average Flammability Exposure specified in paragraph M25.1. We regard any task that is necessary to meet this objective as ''significant.'' We recognize that manufacturers are also required to provide other maintenance information for the FRM as part of the instructions for continued airworthiness required by § 25.1529.

8. Catastrophic Failure Modes

EASA noted that Appendix M significantly differs from the harmonized special conditions it used for certifying FRM on some specific airplane models. EASA asked that we explicitly state that catastrophic results must not occur from any single failure or combination of failures not shown to be extremely improbable (for the FRM system) as required in the noted special conditions. We agree that possible catastrophic failure modes of the FRM must be shown to meet the requested standard. However, we do not agree that EASA's change is needed since the regulatory intent is already addressed by other regulations that apply to FRM. For example, the general requirements of § 25.901 that apply to all Subpart E regulations apply to an FRM certificated to meet § 25.981 and Appendix M. Therefore, we did not make any change to Appendix M based on EASA's comment.

9. Reliability Reporting

Paragraph M25.5 requires the applicant to demonstrate an effective means to ensure collection of FRM reliability data and to provide a report to the FAA. We requested comments on the proposal to require DAHs to submit a quarterly report on FRM reliability for 5 years. We consider these reports necessary to determine whether the predicted reliability for these systems is accurate, and to enable us to initiate necessary corrective actions if they are not. We intend for DAHs to gather the needed data from operators using existing reporting systems that are currently used for airplane maintenance, reliability, and warranty claims. The operators would provide this information through existing or new business arrangements between the DAHs and the operators.

The AEA and ATA questioned this reliability reporting process. They stated the current reporting systems may not be equipped to accommodate this new data requirement without additional burden and cost. Airbus also stated the reporting requirement is unclear and without sufficient detail to enable them to fully comment. The AEA and Airbus also contend that the reporting requirement places operators in a position of having an obligation to report this information to the DAHs where such an obligation did not previously exist. They suggested that we not rely on technicalities and recognize the new obligation being imposed on the operators. Finally, Transport Canada commented that the rule appears to require extensive data collecting and reporting and requested more details be provided regarding what this data will be used for.

The purpose of collecting reliability data is to ensure that failures of the system are reviewed and corrected. In this manner, system reliability is enhanced and FRM malfunctions will become very infrequent. The reporting requirement will also provide data necessary to validate that the reliability of the FRM achieved in service meets the values used in the fleet average flammability exposure and reliability analyses so that the actual flammability reduction in service airplanes will achieve the safety goals of this rulemaking.

The reliability reporting requirements in paragraph M25.5 would not add an additional burden or cost to the operators. We also continue to believe that this rule does not directly impose reporting requirements on operators. These reporting requirements are placed upon the DAH, not the operator. The NPRM and proposed AC 25.981–2B provided a description of the level of complexity that was intended in the quarterly reporting requirements. Furthermore, they do not specify that a new reporting system be created. The current reporting system could be used to gather the data and it could then be provided to the DAHs through normal business agreements. The DAH is required to make arrangements to collect sufficient data and provide a report to us. Reporting would be necessary only for a representative sampling of airplanes, as determined by the manufacturer in its compliance plan. Airlines routinely collect and store reliability data from airplane systems for a variety of reasons, such as engine and airplane system reliability data collected for Extended Twin Operations, warranty claims and maintenance planning, and in many cases they report these data to DAHs.

Therefore, DAHs should be able to readily obtain these data through normal business practices. As a practical matter, DAHs will be monitoring the performance of these systems, just as they monitor other systems, both for warranty and liability reasons. Operators will be providing this information to DAHs as normal business practice to obtain DAH support in correcting any problems that occur. Our expectation is that the DAHs' compliance plans will simply state that DAHs will compile this information into periodic reports (which they would normally do for their own use anyway) and provide them to the FAA. No change has been made to the final rule as a result of these comments.

Bombardier requested that paragraph M25.5(b) be revised to allow non-U.S. manufacturers to submit their reports to their national authorities rather than the FAA. While we acknowledge that submitting a report to a foreign manufacturer's national authority might simplify the paperwork exchange, at this time other authorities have not agreed to harmonize with this rule. Therefore, there are no corresponding regulations that would require the submittal of reliability reports to these authorities or to ensure that we will see these reports. We have revised the requirement to allow for FAA approval of alternative reporting procedures, which would include reporting to other authorities with harmonized requirements. The rule also provides that, after the first five years of reporting, if the demonstrated reliability of the FRM meets and will continue to meet the reliability requirements in paragraph M25.1 (not to exceed 1.8 percent of the FEET), other reliability tracking methods could be proposed to us for approval, or possibly reporting could be eliminated.

Boeing requested that M25.5(b) be revised to allow the applicant to suggest alternative methods of reporting and submit the report to us on a yearly basis instead of a quarterly basis. It asserted that a one-year reporting requirement will allow for more statistically significant data to be collected for new systems. We agree that a quarterly requirement may be unduly burdensome, but we believe that a yearly requirement is too long to enable us to initiate timely corrective action to address reliability problems. Therefore, we have modified paragraph M25.5(b) in the final rule to extend the reporting to once every 6 months for the first five years after service introduction of the FRM. This reporting period should

allow adequate time to gather data to establish the performance of the FRM and for any needed corrective actions to be taken if the performance of the FRM falls below minimum levels.

Boeing also requested changes be made to allow applicants that have established reporting methods to suggest these as alternative methods of meeting the reporting requirements. We believe the current wording allows the DAH the latitude to develop a reporting system and request FAA approval based upon their business arrangements with operators so long as the reporting system provides sufficient data to the FAA to determine the reliability of the FRM. Allowing the use of alternative reporting methods could lead to disparate reports among manufacturers, making FAA oversight difficult.

G. Appendix N—Fuel Tank Flammability Exposure and Reliability Analysis

1. General

Appendix N to part 25 provides the requirements for conducting the analyses for fleet average fuel tank flammability exposure required to meet § 25.981(b) and Appendix M and to comply with part 26 requirements. Appendix N contains the method for calculating overall and warm day fuel tank flammability exposure values needed to show that the affected airplane's tanks comply with the proposed limitations on flammability exposure.

2. Definitions

Paragraph N25.2 provides specific definitions associated with flammability and analysis terminology used in Appendix N. We received comments requesting clarification on five of these definitions:

a. *Ullage:* Boeing suggested this definition should ensure that all of the ullage space is considered (not just the fuel volume), and we agree. In the final rule, this definition has been revised to clarify that the total ullage space must be considered.

b. *Flammability Exposure Evaluation Time (FEET):* An individual commenter wanted to understand when the evaluation time begins and ends for airplanes using ground conditioned air with the auxiliary power unit (APU)/ ground power unit (GPU) operating or electrical power that is connected to the airplane. The evaluation time would begin as soon as the airplane is prepared for flight, regardless of whether an APU or electrical ground power is used. The time would end as soon as the airplane has landed and passengers and crew have disembarked and payload has been unloaded. In passenger operations where numerous flights may occur each day, this definition would result in all the time between flights also being part of the FEET. The only exception would be the time at the end of the last flight of the day to the point in the next morning when the airplane is being readied for flight. This is consistent with the definition for FEET given in paragraph N25.2(b).

c. *Bulk Average Fuel Temperature:* An individual commenter suggested the definition include the means for determining ''bulk average fuel temperature.'' As we stated in the preamble to the NPRM, the determination of whether the ullage in the fuel tank is flammable is based on the temperature of the fuel in the tank or compartment of interest. This is derived from a fuel tank thermal model, the atmospheric pressure in the tank, and the properties of the fuel. The thermal model is comprised of temperature data acquired from various locations within the fuel tank. In order to express the fuel temperature of the tank as a whole in the fuel tank fleet flammability exposure analysis, a weighted average by volume should be calculated at each point in time since the temperature may vary across the tank or compartments of the tank depending upon the volume of that area. We will provide additional guidance on how to determine Bulk Average Fuel Temperature in AC 25.981–2A.

d. *Flash Point:* An individual commenter asked what the term ''heated sample'' meant in this definition. The standardized methods for determining flash point are ASTM D 56 and ASTM 3828. Both methods place a sample of fuel in a closed cup and heat it at a constant rate. A small flame is introduced into the cup, and the lowest temperature at which ignition is observed is referred to as the flash point. The heated sample is the fuel that is placed in the closed cup when conducting this test.

e. *Inerting:* An individual commenter requested that fuel removal from the ullage mixture be included as an acceptable inerting method. We do not agree with this request. The definition of inerting is based upon oxygen concentration, not fuel content of the ullage. The Monte Carlo method uses the bulk fuel temperature to determine fuel tank flammability, and does not consider transport effects or tank ventilation. However, if an applicant wishes to consider methods for removing fuel from the ullage mixture, it could request a finding of equivalent safety under the provisions of § 21.21. To be equivalent, such a method would have to be shown to provide at least the same level of safety as an FRM meeting the performance requirements of Appendix M.

3. Input Parameters

Paragraph N25.3(c) provides the parameters that are specific to a particular airplane model under evaluation that must be provided as inputs to the Monte Carlo analysis. Boeing had two comments on these parameters.

First, Boeing requested we add a new parameter to paragraph N25.3(c) for airplane utilization. This parameter would require the applicant to provide data supporting the number of flights per day and the number of hours per flight from existing fleet data. Boeing stated that this information is necessary to determine when to apply the diurnal effect that is required by paragraph N25.4(c) based upon the number of flights per day. The number of hours per flight will also provide validation of the mean hours per flight generated by the Monte Carlo analysis.

We agree with Boeing's comment and the final rule includes a new paragraph N25.3(c)(7) for airplane utilization that addresses this comment. Boeing's second comment was a request that the statement ''or for the section of the tank having the highest flammability exposure'' be removed from paragraph N25.3(c)(5). As proposed, paragraph N25.3(c)(5) requires that, for any fuel tank that is subdivided by baffles or compartments, the bulk average fuel temperature inputs must be provided either for each section of the tank or for the section of the tank having the highest flammability exposure. Boeing stated that every region in a fuel tank should be considered in order to establish the total flammability exposure of the tank. If the bulk temperature input only consisted of a section of the fuel tank having the highest flammability exposure, Boeing argued that the total flammability of the tank would not be accurately accounted for because the analysis would not consider regions that were less flammable.

Any fuel tank that is compartmentalized or subdivided into sections by baffles is ''flammable'' under the definition for Appendix N (N25.2(c)) when the bulk average fuel temperature within any section of the tank that is not inert is within the flammable range for the fuel type being used. We agree with Boeing that the clause ''or for the section for the tank having the highest flammability exposure'' in paragraph N25(c)(3) causes confusion, and we

have revised paragraph N25.3(c)(5) as requested.

We are providing guidance in AC 25.981–2 on the need to conduct the flammability analysis for each bay or compartment and then sum the time any portion of the tank is flammable in the flammability analysis.

4. Verification of ''Flash Point Temperature''

An individual commenter requested verification of the flash point temperature (120 °F) that is used in Table 1 of Appendix N. We have defined in Table 1 of Appendix N a ''mean fuel flash point temperature'' based upon worldwide survey data that was collected from 1998 through 1999. The Monte Carlo analysis varies the flash point based upon the distribution of possible flash point temperatures for the fuel, similar to what would be expected for a fleet of airplanes where fuels from various refineries and locations are used.

H. Critical Design Configuration Control Limitations (CDCCLs)

Past experience has shown that critical features of airplane designs have inadvertently been changed when maintenance actions or alterations to airplanes have been made. For example, critical wiring that was intended to be separated from other wiring to prevent possible unsafe conditions has been modified so new or rerouted wiring was co-routed with the critical wires. These instances revealed the need for airplane designers to identify safety critical features, in this case wiring separations, and for these features to be marked so that maintenance personnel are aware of the critical features.

We proposed adding fuel tank flammability related design features to the existing fuel tank ignition source CDCCL requirements in § 25.981(d) (formerly paragraph (b)). This section requires CDCCL, inspections, or other procedures as necessary, to prevent increasing the flammability exposure of tanks above that permitted by the amended § 25.981(b) and to prevent degradation of the performance and reliability of any means provided for compliance with paragraphs 25.981(a), (b) or (c). We also proposed adding fuel tank flammability to the existing requirements to place visible means of identifying critical features of the design in areas of the airplane where foreseeable maintenance actions, repairs or alterations could compromise the CDCCL. Similar provisions were proposed in § 25.1815(e) for existing type certificates.

1. Remove Requirement

Boeing, Embraer and Bombardier requested that we remove the requirement to establish CDCCLs to prevent the increase of flammability in the fuel tanks and to prevent degradation of the performance and reliability of the FRM. They stated that it is not practical or effective to try to control flammability through the use of CDCCLs. Instead, they argued that the certification process should be used to establish the design's flammability exposure. Bombardier also pointed out that the type certification data sheet is the appropriate means to capture limitations (e.g., fuel type, fuel temperature) that would affect flammability.

The intent of the CDCCL requirement is to define the critical features of the design that could be unintentionally altered in a way that could cause a reduction in fuel tank safety. In the case of IMM or FRM, maintenance or alterations to the airplane could significantly affect fuel tank flammability and the performance of these systems. Since the heating or cooling rate of a fuel tank could be a critical feature, placing a heat exchanger or other heat source in or near the tank or changing the cooling rate by transferring warm fuel to the tank are examples of changes that could result in a significant increase in fuel tank flammability.

The commenters did not provide any substantiating information as to why they believe it is not practical or effective to use CDCCLs to control fuel tank flammability. Our experience with applying the CDCCL concept to fuel tank ignition sources has shown it to be both practical and effective. Locating this information on the TC data sheet, as suggested by Bombardier, would not provide the information to individuals, such as maintenance personnel, who could be responsible for inadvertently changing the system. Accordingly, we do not believe this suggestion would be effective. In contrast, as airworthiness limitations, CDCCLs are clearly defined as maintenance requirements that are routinely complied with by maintenance personnel and that are enforceable under the operational rules (e.g., § 91.403(c)). The intent of applying the CDCCL concept to FRM and IMM is to provide a common location within the maintenance instructions where information on fuel tank safety related critical features are located. Therefore, we have retained the requirement in § 25.981(d) to identify CDCCLs for FRM and IMM.

On a related issue, paragraph (h) of each of the proposed operational rules would have required operators to comply with the CDCCLs. In the NPRM, we inadvertently omitted reference to § 25.981 as one of the sources of requirements for these CDCCLs. Therefore, we have added these references to the final rule. This change is simply clarifying, since operators are required to comply with airworthiness limitations under existing regulations.

2. Clarification on Responsibility for Later Modifications

As proposed, § 25.1817(d) (now § 26.35(d)) would require that modifications made to an airplane comply with any CDCCL applicable to that airplane. The AEA questioned whether this paragraph would require the TC holder or STC applicant applying for a design change to achieve a flammability exposure level equal to or better than that existing on the unmodified airplanes, or if the TC holder or STC applicant will be held to the flammability exposure limits specified in the rule.

The proposed requirement for TC holders to develop CDCCL is contained in proposed § 25.1815(e) (now § 26.33(d)). It would require CDCCL ''to prevent increasing the flammability exposure of the tanks above that permitted under this section and to prevent degradation of the performance of any means provided under paragraph (c)(1) or (c)(2) [23] of this section.'' The AEA has identified an ambiguity and potential conflict in this quoted provision. Specifically, if a TC holder develops FRM whose performance exceeds that required by proposed § 25.1815(c)(1), it is not clear whether the CDCCL would have to maintain the flammability exposure provided by the FRM or whether the rule would allow an increase in flammability exposure up to that permitted (i.e., 3 percent or equivalent to a conventional unheated aluminum wing tank, along with the ''warm day'' requirement).

To eliminate this ambiguity, we have deleted the reference to paragraph (c)(1) in the quoted provision. This revision has the effect of requiring CDCCL for FRM that allow increasing flammability up to that permitted by the rule, but retains the requirement that degradation of performance of IMM is not permitted. Since IMM may be installed on high flammability tanks, degradation of IMM could have serious safety consequences and would not be consistent with the intent of the rule.

[23] Paragraphs (c)(1) and (c)(2) provide for FRM and IMM, respectively.

We note that TC holders may be inclined to develop overly stringent CDCCL for FRM that could potentially make it impossible for holders of auxiliary fuel tank STCs to meet them. This would force operators to deactivate these tanks. This over-stringency would not be consistent with this rule's intent, which is to minimize the burden on operators, consistent with achieving the safety objectives of this rule. This issue is discussed in more detail in AC 25.981–2B.

Proposed § 25.981(d) contained the same ambiguity by requiring CDCCL to prevent degradation of performance and reliability of any means provided according to paragraph (b) of that section (FRM). We have made a similar change to paragraph (d) to allow degradation of FRM as long as the airplane still meets the standard required by paragraph (b).

3. Limit CDCCLs to Fuel Tanks That Require FRM or IMM

Boeing requested that proposed § 25.1815(e) (now § 26.33(e)) be modified to only require CDCCLs that are necessary to prevent the increase of fuel tank flammability for fuel tanks that require an FRM or IMM. Boeing stated that development of CDCCLs for other fuel tanks is not practical, nor is there history to show that changes to the fuel tanks of airplanes in service significantly increase flammability in the tanks. Boeing also requested that the requirement to make critical features of the design visibly identifiable only apply to areas where it is practical to do so.

For existing designs subject to proposed § 25.1815(e) (now § 26.33(e)), we agree with Boeing, and have limited the applicability of the requirement to develop CDCCL to those tanks for which FRM or IMM are required. We recognize that there are many existing modifications that may affect the flammability exposure of existing fuel tanks. We agree with Boeing that, for main tanks and other tanks not incorporating FRM or IMM, it is impractical to impose CDCCLs on these tanks that may result in significant compliance problems for affected operators. For tanks equipped with FRM or IMM, however, we believe CDCCLs are necessary to prevent degradation of these systems below acceptable levels of performance.

We also agree with Boeing that, in many instances, it may not always be practical to mark critical features relating to controlling fuel tank flammability and the proposed rule should be modified to allow the applicant to justify why markings are not needed. We have modified the next to last sentence in § 26.33(e) accordingly.

This change will allow acceptance of designs without markings when the applicant can show that such markings would be impracticable. We intend for applicants to identify any CDCCL that are required and to provide justification for why the marking would be impracticable. Like all CDCCLs, these would still be documented as airworthiness limitations in the instructions for continued airworthiness.

4. STC Holders May Not Have Data to Comply

The AEA and Airbus challenged our statement in the NPRM that operators have access to information that may be needed by STC and field approval holders to perform flammability and impact assessments. The commenters noted that such information is highly proprietary and is rarely provided to operators. AEA added that contractual agreements to obtain TC holder information are difficult, if not impossible, to obtain.

For many years, the FAA and other regulatory authorities (including EASA) have routinely required manufacturers to make available information that they consider proprietary when we determine providing this information is necessary for aviation safety. For example, most ADs reference information that would otherwise be proprietary in the form of service bulletins, which manufacturers are required to make available to operators. Similarly, § 21.50 requires manufacturers to make available instructions for continued airworthiness, which manufacturers would also typically consider proprietary.

In existing § 25.981(b), we required DAHs to define and make available CDCCL to prevent the unintended creation of ignition sources as a result of maintenance or airplane modifications. In proposed § 25.981(e), we required the identification of critical features of a design that cannot be altered without consideration of the effects on safety. As discussed previously in this section, the final rule includes a new requirement for CDCCLs affecting fuel tank flammability.

Some of the data that STC and field approval holders may need are already normally provided to operators in the airplane flight manual, including fuel management information and airplane climb rates. For other necessary data, such as fuel tank thermal characteristics, we believe that the market will promote business agreements where TC holders will make their data available to customers willing to pay for the data. Airbus or other TC holders may make a business decision not to support their customers and provide these data. In these cases, it may be necessary for the operator or STC applicant to acquire the data from other sources. Another option is for applicants to provide a Monte Carlo analysis based on conservative inputs for parameters where no data are available. For example, an applicant could provide thermal characteristics data that are conservative so that detailed testing and confirmation of data from flight testing of an airplane would not be required. Finally, if these approaches are not practical, the information needed to conduct the Monte Carlo analysis could be obtained from in-service airplanes.[24]

I. Methods of Mitigating the Likelihood of a Fuel Tank Explosion

1. Alternatives to Inerting

In the IRE, we selected the use of onboard nitrogen inerting to assess the costs of reducing fuel tank flammability. By doing this, several commenters thought we were mandating fuel tank inerting as the only acceptable means of compliance. ATA and Bombardier commented that the proposal is not a performance-based rule, since it ''effectively prescribes the use of fuel tank inerting.'' ATA also stated that they were not aware of any existing or emerging FRM or IMM that would meet the proposed performance-based requirements other than inerting. Frontier Airlines questioned why we focused on FRM and IMM as methods of compliance when the FAA concluded that other solutions were better and more practical.

This rule does not mandate fuel tank inerting as the only acceptable means of compliance. Rather, it establishes performance-based requirements that allow applicants to choose the FRM or IMM that best suits their particular airplane design, so long as it meets the performance requirements of this final rule. While the Initial Regulatory Evaluation is based upon the use of inerting, this technology was chosen because it is considered the most cost-

[24] Most of the STCs that could be affected by this rulemaking are auxiliary fuel tanks that use pressurized air to transfer fuel. In these cases, the inputs needed for the Monte Carlo assessment are simplified because the fuel tank pressure is controlled to provide fuel transfer, and the temperature changes of the fuel tank are limited because the fuel tank is located in the cargo compartment.

effective based upon extensive review by industry experts on the ARAC.

Technology now provides a variety of commercially feasible methods to accomplish the vital safety objectives addressed by this rule. Advisory Circular 25.981–2 discusses a number of technologies other than fuel tank inerting that can be used for demonstrating compliance. For example, many auxiliary tank manufacturers are considering pressurizing the fuel tanks to reduce flammability, and many military airplanes use IMM consisting of polyurethane foam. One recent applicant has proposed FRM incorporating pressurization of the fuel tanks and a fuel recirculation system that circulates fuel to the outboard wing to cool the fuel. Therefore, we believe that other technologies are available.

ATA commented that we should consider convening an industry study group to re-examine the potential of higher flash point fuel as a possible alternative method for reducing flammability and overall airplane level risk. ATA noted that refineries may now be capable of producing higher flash point fuels in the near term in sufficient quantity for commercial aviation use. In addition, Boeing advised ATA that a 10 °F elevation in the flash point standard for Jet A could effect a reduction in flammability exposure rates approximately equivalent to the proposed FRM. While ATA acknowledged the likelihood is not high that this approach would provide a more cost-effective solution than FRM, particularly in the long term, it deserves reconsideration. The UK Air Safety Group, through one of its members, agreed with ATA and suggested the use of higher flash point fuels (such as JP–5) should be investigated as a possible solution.

While we welcome the potential for using various forms of FRM, we do not believe delaying implementation of the rule is in the public's interest. The FAA and industry participated in ARAC activities that provided economic analysis of existing technologies, including inerting and mandatory use of higher flash point fuels. At that time, inerting was found to be a more cost-effective means of showing compliance with the performance-based FRM rule. In contrast, as shown in the ARAC report,[25] using higher flash point fuels was not the most practical means of achieving the desired safety level because of the higher cost of these fuels.

[25] Document Number FAA–22997–7 in the docket for this rulemaking.

If technology and refining capabilities have advanced to the point where higher flash point fuels are available in quantity at a competitive cost, the industry may use that means to show compliance, and this means is discussed in the proposed AC 25.981–2. Flammability assessments with a specified minimum fuel flash point, in conjunction with airplane flight manual limitations requiring use of such fuel, could be used as a means of compliance with this rule. Since the rule is performance-based and does not mandate any particular solution, industry may find innovative ways to show compliance to standards.

2. Inerting Systems Could Create Ignition Sources

Transport Canada expressed concern that adding inerting systems to fuel tanks may create ignition sources and result in additional heating of in-fuselage tanks. It argued the solution may inadvertently increase flammability exposure. Transport Canada recommended the FRM be designed to ensure its reliable operation and minimal maintenance. The UK Air Safety Group, through one of its members, also expressed this concern. The commenter suggested that inerting systems could actually compromise the fuel tank system, that insulation could impede inspections of equipment and structure, and that ventilation could cause performance penalties.

We acknowledge the commenters' concerns that installing FRM could introduce negative safety consequences. However, these potential consequences do not outweigh the safety benefits of flammability reduction. As with all safety equipment, the FRM must comply with the existing applicable airworthiness standards that are intended to prevent system failures from having a negative safety impact. In addition, we have introduced new requirements in this rule to address the possible negative safety impact of using an onboard nitrogen inerting system. Compliance with these combined requirements should produce systems that are reliable, maintainable, and meet the flammability requirements of this rule.

3. Instruments to Monitor Inerting Systems

ATEXA recommended that when a nitrogen dilution system is used, the airplane should be equipped with instruments to verify that the system is functioning as expected. These instruments should record data continuously so the pilot can control the oxygen concentration in the tanks within prescribed limits on the ground, before take-off, and at landing. This data should also be recorded in the flight data recorder so that, should another accident happen, the cause/origin could be identified.

As we stated before, this rule is performance based and allows designers the ability to be innovative. The need for indications and controls is design dependent, and the blanket requirement recommended by ATEXA could be overly stringent. DAHs may choose to provide flight crew indications of FRM status, or they may propose an automated FRM with built-in test to verify proper operation. It would be inappropriate for the rule to mandate specific design features.

As for the suggestion to record data, adding additional parameters to the FDR would be cost-prohibitive. Furthermore, we do not consider this necessary because the functioning of any FRM or IMM would likely not have any direct bearing on determining the cause of an accident. The flammability exposure of the fuel tank is not actually an indicator that a tank has exploded and the determination that a fuel tank explosion caused an accident could be made using physical evidence.

In a related comment, the Shaw Aerospace team (Shaw) commented that failure monitoring of system operation is inadequate. As proposed, the system relies totally on the built-in test to detect when the tanks are not inert due to a failure rather than direct measurement of the fuel tank oxygen concentration to determine if the tank is flammable. Shaw cited factors such as oxygen evolution from the fuel as the airplane climbs and local areas of high oxygen in the tanks because of lack of adequate nitrogen distribution as sources of flammability that will not be detected by monitoring the performance of the FRM, rather than measuring the oxygen concentration in the tank. Shaw stated that if the oxygen concentration in the fuel tank ullage is not monitored and periodically sampled, it would be difficult to prove the effectiveness of the system.

From the Shaw team's comments, we infer that Shaw believes the monitoring requirements should be modified to require ullage sampling to ensure that the tank remains non-flammable. We do not agree that a change to the proposed regulation is needed. Compliance methods are discussed in AC 25.981–2. Applicants may choose to measure fuel tank oxygen concentration directly or infer the concentration through system performance capability and monitoring. Appendix M25.2 requires that localized higher concentrations of oxygen that

might result from inadequate distribution of nitrogen, as well as the possible effects of oxygen evolution from the fuel, be addressed in the compliance demonstration.

4. Risk of Nitrogen Asphyxiation

If fuel tank inerting is used to reduce the flammability exposure of a fuel tank, several commenters noted that the introduction of nitrogen enriched air within the fuel tank, and possibly in compartments adjacent to the tank, could create additional risk because of the lack of oxygen in these areas. They believe the risk to maintenance personnel from nitrogen asphyxiation may exceed any safety benefit that fuel tank inerting may provide. To support their position, these commenters cited the Fuel Tank Inerting Harmonization Working Group's (FTIHWG) 2002 Final Report (24–81 lives could be lost between 2005–2020 due to asphyxiation while servicing transport airplanes) and other industrial accident data showing that oxygen depleted atmospheres account for significant loss of life. The commenters are concerned that we have failed to consider this potential loss of life that will result from this rule.

We acknowledge that special precautions are needed for worker entry into confined spaces where fuel vapors or nitrogen enriched air may be present. The standard practice of U.S. industry today is to comply with existing Occupational Safety and Health Administration (OSHA) requirements. These requirements have resulted in ventilating fuel tanks with air and measuring the oxygen concentration before entry into a fuel tank. In addition, persons entering a fuel tank must wear respirators as well as oxygen monitors to alert them should the oxygen concentration be insufficient.

The introduction of nitrogen into a fuel tank does not change the existing requirements for personnel to enter a fuel tank. No new training or changes to fuel tank entry procedures should be needed as a result of this rule. Since there are already specific OSHA requirements for fuel tanks that would prevent any fatalities, any loss of life would be due to non-compliance with OSHA regulations, not this rulemaking. Despite these existing OSHA requirements and the protections they afford, we have added new requirements for markings to notify workers at all access points and areas of the airplane where lack of oxygen could be a hazard. For these reasons, we have not included costs for loss of life due to asphyxiation in the final regulatory evaluation for this rulemaking.

We are also not persuaded by the commenters' reference to the FTIHWG 2002 Final Report. The predicted number of fatalities in that report is based upon application of data from every possible cause of nitrogen asphyxiation that is included in data collected between 1980 and 1989 by the U.S. National Institute of Occupational Safety and Health. The data quotes a total number of fatalities for all causes, including cases such as bottled nitrogen being hooked up to oxygen systems at a nursing home. This bulletin is not based upon data that can easily be applied to the aviation industry and does not provide any data that could be used to predict a rate of fatalities for the specific circumstances relating to airplane fuel tank safety. In addition, we do not think it is appropriate to extrapolate the data from the bulletin without taking into account existing OSHA requirements used in the aviation industry or that the placards required by this rule will heighten awareness to the risks associated with entering fuel tanks.

5. Warning Placards

This rule attempts to reduce the risk of nitrogen asphyxiation by requiring markings on the access doors and panels to the fuel tanks with FRMs, and to any other enclosed areas that could contain hazardous atmosphere. These markings will warn maintenance personnel of the possible presence of a potentially hazardous atmosphere. Bombardier commented that the use of placards and the exact wording proposed is too prescriptive. Bombardier recommended the rule require a general warning, with guidance defining methods of compliance placed in the corresponding AC 25.981–2.

The requirement for placards is based upon methods used throughout aviation and other industries where safety warnings are needed to protect workers from possible harm. Locating the requirements in the regulation rather than in advisory material provides appropriate level of regulatory review of this safety critical information and will result in standardizing the means of warning maintenance personnel. Applicants may apply for a finding of equivalent safety should they wish to propose an alternative means of achieving the level of safety provided by the placard requirement in the rule.

6. Definition of ''Inert''

A fuel tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less from sea level up to 10,000 feet altitude, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet altitude, and extrapolated linearly above that altitude.

Several commenters, including Airbus, AAPA, AEA and Blaze Tech, questioned whether an allowable oxygen concentration of 12 percent would inert a fuel tank. They pointed to comments in an FAA research document stating that ''(f)urther experiments to examine the trend of peak pressure rise as a function of both altitude and oxygen concentration are needed.'' The commenters stated that this is an indication that the 12 percent oxygen concentration limit would not prevent the ignition of fuel vapors from rupturing an airplane fuel tank and that further work is necessary before accepting the 12 percent value. American Trans Air and ATEXA noted that the chemical process industry, as quoted by the French National Institute for Research and Security (INRS, 2004), uses a safety factor of 0.5 for industrial volumes on non-homogenous fuels, and operators must strive to maintain a maximum oxygen content of 5 percent for inerting purposes. Based on this, American Trans Air and ATEXA stated that the 12 percent limit would not be safe.

In 1997, we initiated research activity to determine a maximum oxygen concentration level at which civilian transport category airplane fuel tanks would be inert from ignition sources resulting from airplane system failures and malfunctions. Our testing determined that a maximum value of 12 percent was adequate at sea level. The 12 percent value was initially based on the limited energy sources associated with an electrical arc or thermal sparks that could be generated by airplane system failures and lightning on typical transport airplanes and was not intended to include events such as explosives or hostile fire.[26] As a result of this research, we learned that the quantity of nitrogen needed to inert commercial airplane fuel tanks was less than previously believed. An effective FRM can now be smaller and less complex than earlier systems that were designed to meet the more stringent military standards intended to prevent ignition from high energy battle damage.

The 12 percent value is further substantiated by the results of live fire testing conducted by China Lake Naval Weapons Center that showed a 12 percent oxygen concentration prevents

[26] These test results are available on our Web site: *http://www.fire.tc.faa.gov/pdf/tn02-79.pdf* as FAA Technical Note ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,'' report number DOT/FAA/AR–TN02/79.

ignition, even when high energy incendiary rounds were used that had ignition energies well in excess of any source anticipated to occur on a commercial airplane. These data show that 12 percent oxygen concentration for commercial airplanes achieves a comparable level of protection against catastrophic fuel tank explosions as the traditional 9 percent value used by the military for combat airplanes. The suggestion that the oxygen concentration should be limited to 5 percent is impractical for commercial airplanes since a significantly larger flammability reduction system would be needed and, based upon these test results, there would be no appreciable improvement in airplane safety.

Finally, the quoted FAA comment that additional testing is needed was taken out of context. The recommendation for additional testing referred to conditions when the oxygen concentration was between 1 to 1.5 percent greater than the limit of 12 percent. Testing at these higher oxygen concentration values was not extensive since the focus of the testing was to establish the limiting oxygen concentration where ignition was not possible. Our report's suggestion that additional experiments are needed was not an indication that the 12 percent limit was inadequate—quite the opposite. In fact, the next sentence of the report confirms the importance of the study's validation of the 12 percent limit: ''The results contained in this report should be useful in the design, sizing, and optimization of future airplanes inerting systems and add to the overall knowledge base of jet fuel flammability characteristics.'' [27]

7. Use of Carbon Dioxide

An individual commenter stated that inerting a fuel tank with carbon dioxide may introduce new concerns because of the solubility of this gas in fuel and the possible effects on fuel system operation. This commenter also wanted to know what the acceptable level of oxygen would be to consider the fuel tank ullage inert when this gas was used.

We acknowledge the use of carbon dioxide for inerting may require special considerations for fuel feed system performance. The subject of inerting with carbon dioxide is addressed in AC 25.981–2 and we have revised it to highlight these concerns. As for the commenter's specific question about oxygen concentration in the fuel tank, the acceptable level of oxygen is the same as if nitrogen is used.

8. Environmental Impact of FRM

The UK Air Safety Group, Phyre Tech and one individual questioned the environmental impact of using FRM to displace air and fuel vapor from the fuel tanks into the surrounding environment. These commenters expressed concern about increased hydrocarbon emissions into the atmosphere.

The IRE did not include an environmental assessment or analysis because we determined the environmental impact of a FRM or IMM to be negligible. Their installation will not affect the amount of fuel vapors and hydrocarbon emissions that are discharged from fuel tanks during refueling. Currently, fuel tank designs vent fuel vapors and hydrocarbon emissions into the atmosphere when air is exhausted from the fuel tanks during refueling and flight. Data from recent flight tests of a Boeing 737 equipped with a nitrogen-based FRM showed that installation of FRM and related design changes actually reduce the amount of hydrocarbons vented from the tanks during flight.[28] In those test flights, the data indicated that pressure differences from one wing tip to the other wing tip, where the two airplane fuel tank vent outlets are located, resulted in cross flow of air through the fuel tanks including the center wing tank for the original vent configuration. This occurred often in flight and periodically on the ground when any crosswinds were present. As a result, fuel vapors were exhausted from the fuel tanks into the atmosphere. Any air that entered the fuel tank diluted the nitrogen concentration in the tank such that the fuel tank vent outlets needed to be modified to prevent cross flow of air through the vent system. Modification of the vent system resulted in reduced hydrocarbon discharge to the atmosphere.

9. Current FRMs Fail To Meet Requirements

Transport Canada noted that an FRM must meet not only the requirements in this rule, but also the relevant other sections within part 25, in particular § 25.1309. Transport Canada stated that current FRM designs would not meet § 25.1309 because of a lack of system redundancy, a lack of appropriate system performance monitoring and indication, and the allowance of MMEL relief.

We do not agree that existing FRM systems do not meet all the relevant sections of part 25, including § 25.1309. We approved the FRM systems for the Boeing 747–400 and 737NG series airplanes in August 2005, and December 2006, respectively, as showing compliance with all the applicable part 25 regulations. This approval was validated by EASA shortly thereafter. While the commenter is correct that these systems lack redundancy, and limited dispatch with the systems inoperative is allowed under the MMEL, these systems are supplementary safety systems that are intended to work in combination with the ignition prevention features required by § 25.981 to prevent future fuel tank explosions.

10. FRM Based on Immature Technology

Airbus had numerous objections regarding our description of the prototype hybrid onboard inert gas generation system (OBIGGS) that was tested on an Airbus A320 in 2003. Airbus objected to the OBIGGS being called a ''prototype.'' Instead, Airbus would characterize the OBIGGS as ''laboratory demonstration equipment.'' Airbus (and AEA) commented that the OBIGGS was not in an advanced state of development and would require extensive development before it reached a level of maturity suitable for certification and operation. Airbus also stated that we have not identified to Airbus an existing regulation that would require Airbus to develop an FRM, and Airbus is not committed to any such development program. British Airways also expressed concerns that the proposed systems have not been fully tested or developed and operators may find themselves required to install a system that is not yet fully certified.

We acknowledge that the development and certification of a production and retrofit FRM would require significant engineering and development. While the FRM equipment (i.e., FAA-developed prototype OBIGGS) installed and flown on an Airbus airplane had not been certified, an FRM system similar in concept was designed, tested, and certified on Boeing 737 and 747 series airplanes within two years of the Airbus demonstration flights. This certification demonstrates that the technology is mature, and that our proposed two-year compliance is reasonable and achievable. The harmonized certification requirements for the Boeing 737 and 747 FRM, which were nearly identical to those proposed in the NPRM, were published as Special Conditions in 2005 for public comment.

[27] Document FAA–22997–14, Executive Summary.

[28] Data from flight testing on the Boeing 737 (DOT/FAA/AR–01/63, ''Ground and Flight Testing of a Boeing 737 Center Wing Fuel Tank Inerted With Nitrogen-Enriched Air,'' dated August 2001).

This provided the public, including Airbus, with detailed information needed to develop an FRM. In addition, much of the hardware and components needed for an FRM have been developed by aerospace manufacturers and this developmental work should reduce the time needed for Airbus to develop a system.

During development of the NPRM, Airbus provided us with a cost analysis for an FRM that included the cost of engineering, components and operation of the system. We trust that the cost information was based upon initial engineering assessments of FRM and contact with component vendors. We concur with Airbus that, prior to this final rule, there was no regulation that would require a flammability reduction means to be developed and installed. However, since the NPRM was published, two Boeing 737 and two Boeing 747 airplanes have been delivered with operational FRM based upon nitrogen inerting technology. These systems have performed very well and provide an indication that the technology is mature for application to commercial aviation. In addition, in its March 5, 2007, letter, Airbus confirmed information it shared with FAA in November 2006, that Airbus is proceeding with the development of an FRM (Docket No. 22997–149).

J. Compliance Dates

The Families of TWA Flight 800 Association, Inc., as well as several members of the public, commented that the compliance times are too long and should be shortened. While we understand the commenters' frustration with the proposed compliance times, the schedules chosen are based on the industry's ability to respond to this rule. Each DAH, operator, and after-market modifier will have to follow a series of steps to make appropriate assessments and develop designs and installation plans. Designing FRM for each affected airplane model will require engineering resources; allowing less than 24 months for developing the design changes is not practical and could result in unintended reduction in airplane safety because of increased likelihood of design errors. Accelerating the retrofit schedule could significantly increase the cost of the program due to the need to introduce FRM into operators' fleets during lengthy out-of-sequence maintenance visits. We believe that the schedules chosen correctly balance the risk of a fuel tank explosion during the compliance period with the industry implementation capability.

1. Part 26 Design Approval Holder Compliance Dates

a. Submitting the Flammability Exposure Analysis

Boeing requested that proposed § 25.1815(b)(1) (now § 26.33(b)(1)) be revised to remove the compliance time (i.e., 150 days after the effective date of the rule) for TC holders to submit the flammability exposure analysis for affected airplane fuel tanks. Boeing stated that a large amount of test data is required to develop the analysis and, as such, a compliance time of 150 days would be inadequate. They believe this requirement is primarily for program planning purposes and that the compliance time in Table 1 of proposed § 25.1815(d) is appropriate for that purpose.

Embraer and Bombardier similarly commented that the 150-day compliance time for submitting the flammability analysis is inadequate. The basis for their comment was that validation of fuel tank thermal models will require developing new flammability tools and flight testing, which will require additional time. Embraer proposed a 24-month compliance time, and Bombardier proposed a 12-month compliance time.

We believe the proposed compliance time is adequate. It will ensure that the flammability exposure analyses are completed for every affected fuel tank in a timeframe we consider acceptable because of the reduced amount of work required for conventional unheated aluminum wing tanks. These analyses will determine if FRM is required for a given fuel tank, and the timeliness of completing the analysis is needed to meet the design and implementation schedule. As discussed earlier, we have revised proposed § 25.1815(b)(2) (now § 26.33(b)(2)(i)) of the final rule to allow TC holders to avoid performing the flammability analysis for particular tanks by stating in their compliance plans that they will treat the tank as high flammability and develop FRM or IMM, as required. In addition, no flammability analysis will likely be required to determine the flammability of the center wing tanks of Boeing and Airbus models, since we have determined from their comments that these models exceed the 7 percent limit. We have also significantly reduced the complexity of fuel tank thermal analyses that will be required by the industry because we modified the analysis requirements to allow a qualitative flammability assessment for conventional unheated aluminum wing tanks. No flight testing would be needed to gather data for conventional unheated aluminum wing tanks.

For the remaining tanks for which a flammability assessment is needed, the DAHs have been aware of the need to address fuel tank flammability and have conducted testing of airplanes to develop fuel tank thermal models. Therefore, additional time should not be needed to develop fuel tank thermal modeling for the majority of fuel tanks in the fleet. We believe 150 days is sufficient to complete the required analyses, and have made no change to the compliance time in the final rule.

b. Submitting a Compliance Plan for Developing Design Changes and Service Instructions

Under proposed § 25.1815(h), each holder of an existing TC would need to submit to the FAA Oversight Office a compliance plan for developing design changes and service instructions within 210 days of the effective date of the rule, which equals 60 days after the compliance date for submitting the flammability analysis. Embraer and Bombardier claimed developing a compliance plan within 60 days of submitting the flammability analysis was impractical. They based their objections on the fact that Boeing and Airbus, who are specifically cited in the NPRM, were already preparing for compliance prior to publication of the NPRM. They claimed that those DAHs not cited in the NPRM are not doing advanced preparation and will need extra time.

While Airbus acknowledged that 210 days is a reasonable timeframe, Airbus was concerned about how this timeframe would accommodate delays caused by our review. For example, if the TC holder delivers a flammability analysis which indicates a value under 7 percent, and, after review, the FAA identifies failings resulting in a value above 7 percent, the TC holder would then have significantly less time to draw up any potential compliance plan. Airbus stated that, in such cases, it could be unreasonable for us to require the TC holder to comply within 210 days. Therefore, Airbus suggested that we consider removing the fixed time period of 210 days and allow 60 days after the FAA and TC holder have agreed that the correct result is greater than 7 percent. It noted the requirements on operators of such airplanes should also be adjusted by a similar time.

We do not agree with this suggestion. Airbus provided comments to the NPRM that its airplane models have HCWT with flammability that ranges between 9 and 16 percent. Boeing has

previously provided a statement to the FAA in response to SFAR 88 evaluations that all of its airplane models with HCWT are above the 7 percent value that determines when an FRM or IMM is needed. Based upon this information we have determined that all Boeing and Airbus models specifically listed in proposed § 25.1815 (now § 26.33) have center wing fuel tanks that will require an FRM or IMM. Since the analysis needed to determine whether the affected tanks would require an FRM or IMM is already completed, Airbus and Boeing can begin developing compliance plans for design changes immediately after publication of this final rule. Similarly, if Embraer and Bombardier believe their tanks may be high flammability, they should also begin developing compliance plans for design changes immediately after publication of this final rule.

c. Service Instruction Submittal Dates

Airbus and Boeing recommended that the compliance dates for each airplane model shown in § 25.1815(d), Table 1, be replaced by a specific time period for all airplanes in the table. Boeing suggested the same two-year compliance period be applied to all affected models to allow adequate time to complete design development, validation and certification of flammability reduction systems, and development and validation of service bulletins. Boeing stated that this two-year period would provide the required timing for airline coordination and parts procurement flow time needed to support the beginning of the retrofit period. Airbus suggested 36 months is required to develop the system design and that an additional 6 months should be provided to allow for an in-service evaluation of the FRM so that any problems with the design could be identified and corrected before implementation into the fleet by the operating rules. Embraer requested a compliance time of 48 months to develop the design change. Cathay similarly commented that, while Boeing is making advanced preparations, Airbus is not. Cathay also requested that the compliance time be extended to support a more ''realistic'' FRM development schedule. Cathay also commented that the FAA states ''the proposed compliance date is based on the premise that the NPRM was to be issued in 2005.'' The new compliance dates need to be revised to reflect delays in issuing the final rule. Bombardier felt that 24 months for the design changes should only commence once the authorities have accepted the design change plan.

We agree with the commenters that a fixed time for all airplane models should be established. We have determined that a 24-month compliance time for DAH development of the IMM or FRM is adequate for each of the DAHs to complete the task. Since we have determined from the comments that the Airbus and Boeing models listed in Table 1 in the NPRM require FRM or IMM, no flammability analysis is needed before design development begins. The full 24-month time can, therefore, be used by Airbus and Boeing to develop the design and service instructions for our approval.

In addition, Airbus and Boeing have had significant notification of this rulemaking. In February 17, 2004, we made a public announcement of our plans to develop and publish a proposal to require both retrofit and production incorporation of FRM or IMM. The NPRM was issued in November, 2005, and the rulemaking processing time has provided extensive time to develop designs as well as work with suppliers to discuss cost and schedule issues. Special conditions for the Boeing 737 and 747 were published by the FAA and EASA that provided performance standards for FRM in 2005. Many of the components in nitrogen based FRM systems are similar or identical to components used in military applications or pneumatic systems on commercial airplanes. The air separation modules used in these systems are based on technology currently used extensively in other industries. Therefore, we believe Airbus's request to increase the development and certification time from 24 months to 42 months, and Embraer's request for 48 months, are excessive, and we are confident that 24 months provides adequate time for design and service instruction development. Extending this compliance time would delay the operators' installation of these important safety improvements. Therefore, we have not revised the final rule as requested.

2. Operator Fleet Retrofit Compliance Dates

In proposed §§ 91.1509, 121.1117, 125.509 and 129.117, we included a Table 1 that contained the interim and final compliance dates for operators to complete the installations of IMM, FRM or FIMM required by those sections. Table 1 proposed unique compliance dates for those affected Boeing and Airbus models with high flammability fuel tanks. These dates were selected based upon the availability of service instructions and the risk associated with each airplane model.

a. Removal of Unique Compliance Dates for Affected Airplane Models

Boeing stated that, assuming the FAA concludes that retrofit is justified, the compliance time should be 7 years from the date that service instructions are available for all airplane models. Boeing maintained there is no justification for requiring unique compliance times tied to airplane models and recommended deleting Table 1.

We agree and have removed Table 1 from the final rule. This table has been replaced with a standardized compliance date for all affected airplanes. As explained below, the new compliance time for all models is 9 years from the effective date of this rule. We did not link the operators' compliance time to our approval of the service instructions because the length of time it will take us to approve the submission will depend upon the quality of the submission. While the compliance planning provisions are intended to ensure that the submissions are approvable, whether they have that effect is within the control of the DAHs.

b. Increase Compliance Times From 7 to 10 Years

The ATA asked that the compliance times be increased from 7 to 10 years after manufacturers develop the necessary design changes. ATA argued that the accident rate is such that there is little risk of catastrophic in-flight fuel tank explosion during that period. A 10-year compliance time would allow all operators to incorporate the FRM in heavy maintenance visits instead of only 85 percent of them.

We partially agree with ATA. As discussed previously, we are providing a compliance time of 24 months for all affected manufacturers to develop necessary design changes. We have adjusted the compliance times in the operational rules to allow 6 years after the effective date for compliance by 50 percent of an operator's fleet, and 9 years for full implementation, i.e., we are retaining the compliance time of 7 years after the design changes are developed. The compliance period of 7 years for operators to incorporate the design modifications into each fleet was selected to allow the vast majority of the FRM or IMM to be incorporated during airplane heavy checks and to achieve the safety level expected by the public.

Nevertheless, as ATA noted, 15 percent of the airplanes may need to incorporate FRM at a time other than during a heavy check. To address this concern and reduce the costs of this rule, we have revised the operational requirements of parts 121 and 129 to

allow a one-year extension for retrofit if the operator elects to use ground conditioned air for all airplanes with high flammability tanks (i.e., Boeing and Airbus models) for ''actual gate times'' exceeding 30 minutes when ground air is available at the gate and operational and the ambient temperature exceeds 60 degrees F. This approach responds to requests for more time to retrofit while providing compensating risk reduction by use of ground conditioned air, which reduces flammability for airplanes on the ground. We are not including this extension provision in part 125, because these airplanes are typically not parked at gates where ground conditioned air is available. Also, these operators typically only operate one or very few airplanes subject to this rule, so they will not encounter the difficulties that ATA identified in scheduling large fleets of airplanes for modifications.

For purposes of this provision, ''actual gate time'' is time when the airplane is parked at a gate for servicing and passenger egress and ingress. If scheduled gate time is 30 minutes or less, but departure is delayed so that airplane is parked for more than 30 minutes, use of ground air is required for any period longer than 30 minutes. This ensures that heating of tanks (and resulting increased flammability) is limited. ''Available'' means installed at the gate. ''Operational'' means working, so that an operator is not in violation simply because ground conditioned air is out of service for maintenance. Ambient temperature is the official temperature at the airport as provided by the U.S. National Weather Service or worldwide METAR [29] weather report system. This provision requires revision of operator's operations specifications and relevant manuals to ensure that the commitment to use of ground air is fully implemented and enforceable. In the near future we will be issuing guidance on compliance with the conditions for this extension.

c. Interim Compliance Dates

We proposed interim compliance dates for operators to incorporate any FRM or IMM into 50 percent of their affected high flammability airplanes within their fleet. Boeing requested we revise §§ 91.1509(d)(1), 121.1117(d)(1), 125.509(d)(1), and 129.117(d)(1) to state:

''IMM, FRM or FIMM, if required by §§ 25.1815, 25.1817, or 25.1819 of this chapter, that are approved by the FAA Oversight Office, are installed in at least 50 percent of the operator's fleet within 4 years from the date service instructions are available. This does not apply for certificate holders with only one airplane in the fleet.''

Boeing stated that newly delivered airplanes should be included in the operator's ''fleet'' for purposes of Table 1. Boeing also commented that Table 1 should not be split by individual airplane model, but should include all airplanes in a given operator's current fleet. The recommended revision to 50 percent of the operator's fleet should also specify if this is 50 percent of their fleet operating on the compliance date, 50 percent of their fleet that is operating at the beginning of the compliance period, or 50 percent of their fleet that will be operating at the end of the compliance period.

We agree that additional clarification is needed on the definition of ''50 percent of fleet.'' We intended that the 50 percent figure be based on all airplanes that are required to be modified under this rule and that are being operated by an operator 6 years after the effective date of this rule. Any airplanes transferred or purchased with high flammability fuel tanks, would be included in the operator's ''fleet.'' Since newly delivered airplanes are not required to be modified, they are not included as part of the 50 percent of the fleet to meet this requirement.

K. Cost/Benefit Analysis

As noted in the Regulatory Evaluation Summary, specific comments on the quantitative costs and benefits estimates are more completely discussed in the FRE. In this section, we only address general economic issues that were addressed by the comments.

1. Security Benefits

In the NPRM, we noted that the potential benefits from preventing terrorist-initiated accidents were excluded from consideration in both the ARAC reports and the IRE. While the proposed FRM requirements were not primarily intended to address terrorist-initiated explosions, we invited public comment on possible additional security benefits that inerting fuel tanks may provide. In response to this request, we received several comments, including the following:

- The NTSB and several individuals supported including benefits from prevented consequences of terrorist action in the FRE and suggested we should complete a cost/benefit analysis of inerting all fuel tanks to address terrorist threats. The NTSB noted that, although not intended for missile defense or entirely effective as such, flammability reduction systems could mitigate the results of shrapnel entering fuel tanks during a terrorist act. Therefore, the NTSB recommended that the cost-benefit analysis for the final rule should include estimates of potential missile attacks on airplanes. In addition, these commenters also supported including possible benefits from preventing terrorist actions caused by bombs exploding in the airplane.
- CAPA stated that the United States is at a heightened risk of terrorist attacks. CAPA noted the aviation industry affects nearly 9 percent of the U.S. Gross Domestic Product, and suggested that terrorists will undoubtedly seek ways to attack the aviation infrastructure. CAPA recommended that we should complete a cost benefit analysis of inerting all fuel tanks and make recommendations to the Department of Homeland Security and aviation industry.
- NATCA commented that there would be an adverse effect on the public's confidence in flying if another fuel tank explosion occurred.
- Airbus and AEA stated that, in theory, there may be some benefit to improving security by installing FRM on airplanes. However, they noted that we have no basis for estimating the amount of that benefit and they do not believe it to be substantial.
- ATA and FedEx objected to the FAA's including the Avianca 727 accident in its justification of this rule. They stated that this accident, which resulted from a small bomb placed above the center wing fuel tank on the previous flight, would not have been prevented by the requirements of this rule.

Based upon the comments received and our review of historical evidence, we have not quantified any potential benefits from an FRM system preventing a fuel tank explosion caused by a terrorist missile or an on-board bomb.

We have also not quantified the potential benefits from a fuel tank explosion being misinterpreted as a terrorist-caused event because such an

[29] METAR (from the French, ''message d'observation météorologique régulière pour l'aviation,'') is a format for reporting weather information. METAR means ''aviation routine weather report'' and is predominantly used by pilots in fulfillment of a part of a pre-flight weather briefing, and by meteorologists, who use aggregated METAR information to assist in weather forecasting.

METAR reports usually come from airports. Typically, reports are generated once an hour; however, if conditions change significantly, they may be updated in special reports called SPECI's. Some reports are encoded by an Automated Surface Observing System located at airports, military bases and other sites. Some locations still use augmented observations, which are recorded by digital sensors and encoded via software, but are reviewed by certified weather observers or forecasters prior to being transmitted. Observations may also be taken by trained observers or forecasters who manually observe and encode their observations prior to their being transmitted. Source: Wikipedia, August 2007.

outcome is too speculative to include in the main body of the analysis. However, we have provided a quantified estimate of the possible benefits from preventing this misinterpretation in Appendix A of the FRE.

However, some of the public will cancel or curtail their air travel after they discover that the in-flight accident was caused by an airplane electrical or mechanical malfunction. An in-flight explosion is a catastrophic accident. There is a long history that air travel declines for two to three months after a major catastrophic accident. We use a study by Wong and Yen, ''Impact of Flight Accidents on Passenger Traffic Volume of the Airlines in Taiwan'', in the *Journal of Eastern Asia Society for Transportation Studies*, vol. 5, October 2003, to provide an estimate of the potential demand losses from a fuel tank explosion.

2. Likelihood of Future Explosions in Flight

The IRE assumed that all future accidents caused by fuel tank explosions will occur in flight. This assumption was based upon an evaluation of the flammability exposure times for various flight phases that showed the majority of the time fuel tanks are flammable is during flight. The method used by us in the IRE to estimate the likelihood of future explosions occurring in flight or on the ground was based upon an earlier version of the Monte Carlo model, ''Fuel Tank Flammability Assessment Method User's Manual, DOT/FAA/AR–05/8.'' This earlier model used ground times of 30, 60 and 90 minutes for short, medium, and long-range airplanes. Using this model, we determined 90 percent of the flammability exposure time occurred during flight. We then simplified the IRE by assuming all future accidents would occur in flight.

Our review of recent fleet data collected from in-service airplanes indicates that ground times are longer than used in the earlier version of the Monte Carlo model. This results in a higher percentage of the flammability exposure time being when an airplane is on the ground. In addition, the historical accident rate of one accident out of three occurring in flight is based upon a limited number of events and is not a valid sample size for establishing the future accident rate. Since ignition sources may occur at any time during ground or flight operations, the ARAC fuel tank study concluded that the likelihood of future fuel tank explosions correlates to the flammability exposure of a fuel tank. We agree with this conclusion.

MyTravel Airlines, AEA, Alaska Airlines, ATA, and Airbus stated that, the probabilities of an in-flight explosion and an on-the-ground explosion is the simple extrapolation of the three events; that is, there is a 33.33 percent probability of an in-flight explosion and a 66.67 percent probability of an on-the-ground explosion. Boeing commented that its engineering analysis indicated an 80 percent probability of an in-flight explosion and a 20 percent probability of an on-the-ground explosion and supported its recommendation with a recent flammability assessment using a revised Monte Carlo model. Boeing also recommended that a sensitivity analysis be included in the regulatory evaluation varying the number of in-flight events by values of 33 percent or 50 percent. In the GRA, Incorporated appendix to the ATA comment, they noted that using plausible assumptions in FAA's model, a better estimate of the percentage of time that a tank is flammable would be 78 percent in the air.

We believe that the appropriate method to evaluate the future risk is through a flammability assessment rather than observations of an infrequently occurring event. As a result, we agree with the Boeing analysis and disagree with the ATA and Airbus analyses and revise our risk analysis so that there is an 80 percent probability that an explosion will occur in flight and a 20 percent probability that it will occur on the ground.

Finally, we do not agree with Boeing's recommendation to include in the FRE an assessment of the sensitivity of varying the ground versus flight accidents between 30 and 50 percent. The IRE already included variations in many factors that affect the predicted cost and benefits and adding another sensitivity factor would not provide useful data for determining the need for this rule.

3. Costs to Society of Future Accidents

Several commenters said the cost of future accidents used in the IRE did not include all the costs to society. They said the IRE excluded the costs of investigating the accident, cleanup at the accident scene, replacement and retraining of flight crew, and any design change needed to correct failures of parts or systems on the airplane. They added that an accident would also cause a loss of confidence in the aviation industry leading to the public reducing their airline travel. They requested these additional costs be included in the final rule.

We agree with some of these comments and, as previously discussed, we include quantitative estimates of the potential benefits from the loss of confidence in aviation transport. We disagree that we did not include accident investigation and clean-up costs because the IRE contained a specific $8 million cost for the accident investigation. Although it may occur that design changes will need to be made, these changes would be done via rulemaking or AD and the costs for those specific changes would be estimated when proposed.

4. Value of a Prevented Fatality

AEA and ATA stated that the value of a prevented fatality should be 3 million dollars. AEA stated there is no basis for using a higher value.

Different government entities use different estimates of the value of a prevented fatality. For example, the Environmental Protection Agency uses a value of $7 million and the Department of Transportation has historically used a value of $3 million (which we used in the IRE). There are several different values that have been reported in economic literature and there is no one value on which there is universal or near-universal agreement. The Office of Management and Budget allows agencies to evaluate their cost-benefit analyses using alternative values for a prevented fatality in order to evaluate how sensitive the analytic results are to the assumed values. Therefore, we believe that varying the value to show the range of reasonable effects is appropriate and we have included values of $3 million, $5.5 million, and $8 million to provide a better understanding of the sensitivity of the evaluation to changes in this baseline assumption.

5. Cost Savings if Transient Suppression Units (TSUs) Are Not Required

The NTSB determined that the probable cause of the TWA Flight 800 explosion was ignition of the flammable fuel/air mixture in the center wing fuel tank. Although the ignition source could not be determined with certainty, the NTSB determined that the most likely source was a short circuit outside of the center wing tank that allowed excessive voltage to enter the tank through electrical wiring associated with the fuel quantity indication system (FQIS). We issued ADs mandating separation of the FQIS wiring that enters the fuel tank from high power wires and circuits on the classic Boeing 737 and 747 airplanes after the TWA 800 accident, and this resulted in installation of TSUs as an

alternative method of compliance with the ADs.

In the NPRM for this rulemaking, we requested public comment on the possible cost savings that would occur if airlines were not required to install transient suppression units (TSUs) on the fuel quantity gauging systems of the high flammability fuel tanks that would need FRM to comply with this rule. We received the following responses:

- Several commenters stated that we need to clarify the requirements for design changes resulting from SFAR 88, since they believed no additional changes to incorporate TSU would be needed for their fleet.
- According to ATA, the cost avoidances would be minor, compared to the impact of the ignition-prevention ADs and pending SFAR 88 maintenance upgrades.
- AEA stated that TSUs will not be removed, so there is no cost savings. If the TSUs were removed, additional costs would be incurred for certification, service bulletins, manpower, and hangar space.
- Airbus and My Travel Airways commented that they anticipate no significant savings since only a fraction of the fleet is designed with a need for these devices, and the cost of these devices is small, compared to the cost of flammability reduction systems.
- Transport Canada commented that ignition prevention should not be traded off against flammability reduction. Both should be required.
- Qantas stated that, if these devices could be removed from its existing fleet, it would realize a significant cost savings in operations and maintenance. Qantas also said that the cost of these devices is minimal compared to the installation of an FRM, but if the FQIS requires replacement of the fuel gauging system to make the devices effective, it would be similar in cost to an FRM. However, Qantas noted that an FRM may produce a weight penalty such that a FQIS replacement would still be preferred.

Prior to this rule, the findings from the analysis required by SFAR 88 showed that most transport category airplanes with high flammability fuel tanks needed TSUs to prevent electrical energy from airplane wiring from entering the fuel tanks in the event of a latent failure in combination with a single failure. Since this rule requires FRM or IMM to mitigate an unsafe condition by converting these fuel tanks into low flammability fuel tanks, TSUs will no longer be needed. Therefore, we believe it is appropriate to include this as a cost avoidance of this rule. However, based on the comments that installing these TSUs will impose a minimal cost, we did not estimate a cost offset for those airplanes that would have been required to have TSUs installed but are no longer required to do so under this rule.

6. Corrections About Boeing Statements

Boeing stated that the IRE has several statements that should be corrected in the final version. First, Boeing will not provide engineering analyses via service bulletins or provide initial aid to large airlines and independent third party repair stations. Boeing asked that these statements be deleted. Boeing also indicated that it will follow the regulatory requirements for providing service information. Finally, Boeing pointed out that the IRE improperly references STCs where it should be referencing amended TCs.

We agree with Boeing and have revised these issues in the FRE accordingly.

7. 757 Size Category

Boeing noted that the Model 757 was classified as a small airplane in the IRE and suggested that it be included in the medium category. Boeing based this on the fact that the Model 757's fuel tank volume and airplane performance is similar to that of other airplanes categorized as medium-sized by ARAC.

We agree and have included the Boeing 757 in the medium category and have adjusted the weight and cost estimates accordingly.

8. Number of Future Older In-Service Airplanes Overestimated

Alaska Airlines commented that the IRE overestimated the number of older in-service airplanes in future years, which artificially increases the benefits of the FRM retrofit requirements. Alaska Airlines asserted that industry projects a higher proportion of newer airplanes versus older airplanes for the projected benefit period.

The fleet mix in the IRE was based upon our fleet forecast. Therefore, the number of newer airplanes reflected the official FAA fleet projections. In the FRE, we have updated the fleet mix data using the most recent *FAA Aerospace Forecasts Fiscal Years 2006–2017*. This forecast projects higher retirement rates than those forecasted in the FAA Aerospace Forecasts *Fiscal Years 2004–2015*, which we used in the IRE.

9. Revisions to the FRM Kit Costs

ATA, AEA, AAPA, Federal Express, Airbus, and Boeing suggest that we revise the price of the FRM components because the original ARAC estimates had not been fully developed and tested and, subsequent to this additional development, the FRM kit costs are higher.

Boeing has provided new kit costs for its various models, which are revised from its previous component costs. We agree with Boeing and use them in the FRE for production airplanes.

However, United/Shaw Aero Devices/Air Liquide have recently developed an FTI system to retrofit in airplanes and they have reported kit costs. As they have a patent for the system and operational prototypes, we use the United/Shaw Aero Devices/Air Liquide retrofitting kit costs in this analysis.

10. Revisions to the Labor Time To Retrofit FRM Components

Several commenters reported that the labor hours to retrofit an airplane used in the IRE were too low. In its discussions with the airlines, Boeing provided an estimated number of labor hours to retrofit its kits by model. The ATA reviewed these estimated hours and commented that its expected labor hours were approximated 25 percent to 40 percent higher than the preliminary numbers provided by Boeing. Qantas reported that the retrofitting labor hours are 50 percent greater than those in the service bulletins.

However, the United/Shaw Aero Devices/Air Liquide retrofitting kit is different from the retrofitting kit on which the ATA based its reported hours. As a result, just as we use the United/Shaw Aero Devices/Air Liquide retrofitting kit costs, we also use their labor hour estimates to install their system.

However, the labor hours to retrofit these kits will decline over time due to mechanics becoming more familiar with the installation procedures. T.P. Wright found that an 80 percent learning efficiency has been a common occurrence in airplane production. We assume that this 80 percent learning efficiency also applies to retrofitting operations.

11. Retrofitting Costs per Airplane

Cathay Pacific and the AAPA commented that the per airplane retrofitting costs reported by EASA for an Airbus airplane would be between $600,000 to about $1 million (converting Euros into Dollars). Airbus provided similar comments.

In combining the United/Shaw Aero Devices/Air Liquide kit costs and their labor hours costs, we calculate that the per airplane retrofitting costs will initially be $110,000 to $250,000. Over time, these costs will decline by $10,000 to $17,000 per airplane.

12. Percentage of Retrofits Completed During a Heavy Check

Airbus commented that the average time between heavy checks is 10 to 12 years. Thus, 85 percent of the retrofits could not be completed within the proposed 8 year time-frame.

We disagree. Our experience has been that the vast majority of airplanes in commercial passenger service in the United States have some form of a heavy check no later than every 8 years.

The AEA commented that 60 percent of the retrofits would be completed during a heavy check while ATA commented that 85 percent would be completed during a heavy check. In the IRE, we had used 85 percent.

We agree with the ATA comment and use the 85 percent value in the FRE. Operators who choose to take advantage of the extension allowed by use of ground conditioned air will be able to complete the retrofits of an even higher percentage of their fleet during heavy checks.

13. Number of Additional Days of Out-of-Service Time To Complete a Retrofit

The ATA commented that retrofitting FRM during a heavy check would add two days of out-of-service time, AEA commented that it would add two to three days, while Airbus commented that the airlines had told EASA that it would add one day.

In the IRE, we had used two days. We agree with ATA and use two days in the FRE for the out-of-service time if the retrofit is performed during a heavy check.

Airbus commented that retrofitting FRM during a medium check would add 5 days while it would add seven days if completed during a special maintenance visit. In the IRE, we had used four days out-of-service for a retrofit performed during a special maintenance visit based on the ARAC report. Airbus provided no justification for its disagreement with the ARAC conclusion. As we received no comments other than the Airbus comment on this topic, we disagree with Airbus and use four days out-of-service for a special maintenance visit.

14. Economic Losses From an Out-of-Service Day

Airbus and the ATA commented that the losses to an airline from an out-of-service day should be based on the airplane on ground economic loss or the loss in net operating revenue, not a pro-rated monthly lease rate as used in the IRE.

We disagree. While it is true that the loss to air carrier A is greater than the prorated monthly lease rate, most potential air travelers will use alternative air carrier B if air carrier A takes an airplane out of service for a short time. Consequently, alternative air carrier B receives an economic benefit that is not captured by only focusing on the air carrier airplane that is out of service. The FAA's responsibility is to cost the potential loss to the aviation system, not individual air carriers at specific points in time. This is particularly apparent when alternative air carrier B will need to remove an airplane from service and air carrier B's air travelers will use air carrier A that will receive an economic benefit that is not captured by focusing solely on the loss to air carrier B at that specific point in time.

Airbus commented that the FRM cost for its products is underestimated by a factor of two to three. Based upon review of all comments, including those based upon a certificated FRM provided by Boeing, we believe the FAA cost estimates should be revised by a factor of 1.6 and we have adjusted the regulatory evaluation accordingly. We applied the revised retrofitted airplane costs for the certificated FRM systems to all similarly-sized airplane models because we determined that the fuel tank inerting systems will be similar for both manufacturers.

15. Updated FRM Weight Data

Boeing provided updated weight data for the flammability reduction systems that have been or are being developed for its airplane models. Boeing stated that the final weights for the Boeing 747–400 and 737–NG systems are known since the designs have been certified. Boeing estimated the weight for the Boeing 777 system. As for the Boeing 757 and 767 systems, preliminary designs indicate these systems will be similar and Boeing estimated the weights based upon comparison to the other models. Boeing also provided updated estimates for average annual flight hours for Boeing airplanes.

We have revised the weight and annual flight hour data in the FRE for production airplanes based on Boeing's updated information. We also used this updated data for similarly sized Airbus airplane models.

United/Shaw Aero Devices/Air Liquide reported that their retrofitting kits weigh less than the Boeing kits. We used United/Shaw Aero Devices/Air Liquide kit weights for the retrofitted airplanes.

16. Updated Fuel Consumption Data

Boeing also provided revised annual fuel consumption due to the FRM weight and increased bleed flow and ram drag. A GRA, Incorporated report that surveyed several air carriers provided current air carrier fuel consumption per pound of additional weight.

For the annual fuel consumption due to the FRM weight, we have used the GRA values from the air carriers because we believe the air carriers will be more accurate in reflecting their actual usage over a variety of flight mission lengths and conditions than the Boeing engineers would be. We used the Boeing estimates of the additional fuel consumption for increased bleed air flow and ram drag in the FRE. We used these rates for both production and retrofitted airplanes because United/Shaw Aero Devices/Air Liquide did not provide independent estimated rates for their kits.

17. Updated Fuel Cost Data

Several commenters reported that the $1 per gallon aviation fuel cost used in the IRE no longer reflected the economic reality. For a cost per gallon, Frontier suggested $2.11, ATA suggested $1.50, Qantas suggested $2.00, and Airbus suggested $1.50.

We agree that the per gallon price of aviation fuel has increased. Based on our *FAA Aerospace Forecasts Fiscal Years 2008–2025*, we determined that the average future price per gallon will be $2.01. Although this fuel price is based on the most recently published FAA forecast, we recognize that, given the current record high oil prices, this estimate may underestimate the long term aviation fuel cost.

18. Cost of Inspections

Air Safety Group, UK commented that the NPRM does not include any costs associated with the impact of FRM inspections on flight delays and cancellations. The commenter recommended that the cost/benefit analysis be revised to take a more realistic account of these additional operational costs. Boeing's comments included revised estimates of these costs.

With respect to flight delays and cancellations due to these inspections, the DAH requirements allow placing a nonfunctional FRM or IMM on the MEL provided the overall system performance meets the minimum criteria. We agree with the revised costs from Boeing on the costs of delays and cancellations in the FRE and used them for both production and retrofitted airplanes.

19. Inspection and Maintenance Labor Hours

Boeing commented that the annual labor hours for inerting system inspection and maintenance time should be revised to 6 hours for Boeing passenger and all-cargo airplanes. Boeing cited design features and related fault indication systems that will eliminate the need for scheduled maintenance performance checks on the inerting systems. Boeing also reported that unscheduled delays will only occur for failures that require locking the NGS Shutoff Valve closed.

We agree with Boeing's estimates for both production and retrofitted airplanes and use them in the FRE.

20. Daily Check

ATA commented that its estimates for inerting system operational and maintenance costs are much higher than those used by the FAA. ATA stated that 15 maintenance minutes per airplane per day will be required and this was not accounted for by the FAA.

We infer from ATA's comment that ATA believes that our estimated maintenance costs should be revised to include a 15 minute daily check of the FRM. The inerting system certified by the FAA (and validated by EASA) for the Boeing Model 737NG and 747–400 airplanes did not include a daily check. Specific features of the design, in conjunction with indication systems, removed the need for a daily check. We anticipate that Airbus's design will be similar in that the electronic centralized airplane monitor will be utilized for FRM status. This would impose no greater burden on operators than the FRM systems that have been certified to date. As a result, we have not included costs associated to a 15 minute daily check of the FRM in the FRE.

21. Spare Parts Costs

Boeing asked that the inerting system spare parts costs be revised based on its updated costs from suppliers. Boeing estimated that the air separator/filter capacity and life is directly related to the environment in which the airplane is operated. Boeing added that its filter installation includes monitoring for excessive pressure drop that is used to determine when the filter needs to be replaced. Finally, Boeing noted that its expected filter maintenance interval is greater than one year for average environmental conditions.

We agree with the cost information provided by Boeing and used the new cost for the filter element replacement in the FRE. While we acknowledge the filters will be replaced when the pressure across the filter is excessive, Boeing did not provide an expected average filter replacement interval. In general, air separator/filters are expected to last between 1 and 3 years, depending upon the conditions under which the airplane is flown. An annual filter element replacement is a worst case situation. As a result, in the FRE, we use an average filter element replacement interval of every 2 years.

22. Air Separation Module (ASM) Replacement

Boeing asked the FAA to revise the cost of ASMs that would need to be purchased for replacing modules when they reach their design life. The IRE contained estimates ranging from $5,275 to $28,814. Boeing stated the revised costs range from $30,520 to $151,000. As United/Shaw Aero Devices/Air Liquide did not provide an estimate for this cost component, we applied the Boeing estimate to retrofitted airplanes.

Boeing also requested that the ASM replacement costs be evaluated based upon data provided in a table for average annual utilization by Boeing airplane model. Boeing believed this data is more realistic of model specific fleet utilization. While the IRE assumed an average utilization rate of 3,000 flight hours, Boeing's current data for different models range from 3,000 to 4,250 flight hours for passenger carrying airplanes and 1,000 to 4,250 for all-cargo airplanes. Finally, Boeing stated that the design life goal for the ASM remains 27,000 hours. FedEx commented that a manufacturer had told them that the ASMs will need to be replaced every few years.

We agree with Boeing that the design goal of an ASM replacement every 27,000 flight hours will be reached and we use that interval for the ASM replacement frequencies in this Regulatory Evaluation.

L. Miscellaneous

1. Harmonization

Several commenters (Boeing, Transport Canada, Alitalia, AAPA, Virgin, Cathay) expressed the need for harmonization of FAA requirements with those of other national aviation authorities. These commenters noted that harmonization with the other major regulatory agencies would benefit the industry and encourage a broader dialogue. We agree that harmonization of the fuel tank flammability safety requirements is usually desirable. Prior to and throughout the development of this rule, we used several avenues to involve other foreign regulatory authorities and industry, including:

- Aviation Rulemaking Advisory Committee (ARAC) working groups comprised of representatives of foreign regulatory authorities and industry and other interested parties were used to review issues and provide recommendations for developing and harmonizing this rule. EASA, Transport Canada and the Brazilian CTA participated in these working groups, which conducted extensive studies of fuel tank safety. These studies included a review of the fleet history as well as evaluating the various options for improving airplane safety through flammability reduction. One working group was created to review fuel tank flammability and methods to reduce flammability in the tanks. This then led to the creation of a second working group that exclusively reviewed fuel tank inerting. The recommendations from these working groups became part of the basis for this proposed rule. The recommendations from the two fuel tank safety ARAC studies guided our rulemaking proposal and this final rule.
- We also participated in an industry and regulatory authority group assembled by EASA to review fuel tank flammability safety and produce an EASA Regulatory Impact Assessment (RIA). This RIA is available on EASA's Web site at (*www.easa.eu.int/doc/Events/fueltanksafety_24062005/easa_fueltanksafety_24062005_qa_summary.pdf*).

EASA's RIA recommended production incorporation of FRM on newly produced airplanes that have high flammability tanks and EASA has indicated that it plans to propose an amendment to their regulations applying to new transport airplane designs in CS–25. We anticipate harmonization of these requirements. However, EASA has not yet determined that FRM retrofit should be required.[30] We believe the fleet operation projections show that the risk of an explosion occurring on existing airplanes and newly produced airplanes is similar. This safety issue needs to be addressed, despite the lack of harmonization, and we have included a FRM retrofit requirement in this final rule.

While we remain committed to the goal of harmonization, our primary objective in this rulemaking is to improve aviation safety. When we determine that the need exists for a certain regulation, and the other regulatory agencies find that a more stringent or lenient requirement is appropriate, we review their findings

[30] EASA has commissioned a study to reconsider the desirability of a retrofit requirement.

and will revise our regulation if our regulatory goals are met, an equivalent level of safety is achieved, and any additional burden imposed on the industry is justified. This is the approach we have taken in drafting this rule.

2. Part 25 Safety Targets

AEA commented that part 25 is missing safety targets and recommended the final rule include a specific target for both ignition and flammability reduction. This target could be achieved by ignition source prevention in combination with flammability reduction. AEA proposed the target be the same as for any other catastrophic event in transport category airplanes: 10^{-9} per flight hour.

We do not agree with AEA's proposal to include a safety target in part 25. As discussed previously, because ignition sources are caused by human error and other unpredictable factors, it is impossible to assign an accurate probability value to them. Therefore, § 25.981 is based on a balanced approach for preventing fuel tank explosions. This section provides both ignition prevention plus an additional safety improvement by controlling fuel tank flammability exposure to an acceptable level. Today's rule adds requirements for fuel tanks located in the fuselage contour and extend the mitigation into the fleet of existing airplanes.

IV. Rulemaking Analyses and Notices

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new (or amended) information collection requirement(s) in this final rule to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0710.

This rule supports the information needs of the FAA in approving design approval holder and operator compliance with the rule. The likely respondents to this proposed information requirement are the design approval holders such as Boeing, Airbus and several auxiliary fuel tank manufacturers as well as operators. The rule requires the certificate holders to submit a report to the FAA twice each year for a period up to 5 years. Operators who choose to use ground air conditioning would be required to provide a one time statement of their intent to use this option. The burden would consist of the work necessary for:

- DAH to develop flammability analysis reports and the service instructions for installation of IMM or FRM.
- DAH to develop changes and incorporate a maintenance plan into the existing maintenance programs.
- DAH to provide bi-annual reliability reports for FRM for the first 5 years of operation.
- Operators to provide notification to the FAA of their intent to use ground air conditioning.
- Operators to record the results of the installation and maintenance activities.

The largest paperwork burden will be a one-time effort (spread over 3 years) associated with the Design approval holders (TC and STC holders) to develop design changes. Operators will also need to update their maintenance programs, including maintenance manuals, to include the design changes. The basis for these estimates is the industry Aviation Rulemaking Advisory Committee report, which provided hours for each of the 3 major areas of paperwork. Based on an aerospace engineer total compensation rate of $110 an hour, the total burden will be as follows:

Documents required to show compliance with the final rule	Hours	Total cost (in millions of $2007)
Application to FAA for Amended TC or STC	405,000	44.550
Documents (Specifications, ICDs, etc.)	30,900	3.399
Revisions to Manuals (Flight Manuals, Operations, and Maintenance) for FRM Systems	29,500	3.245
Total	465,400	51.194

As these recordkeeping costs will be spread out evenly over the three years, the yearly burden will be $17.065 million and involve 155,133 hours.

After this initial 3-year period, this rulemaking would result in an annual recordkeeping and reporting burden of 4,000 hours. This burden is based on five (5) design approval holders submitting 40 total reports per year requiring an average of 100 hours to complete each report. All records that will be generated to verify the installation, to record any fuel tank system inerting failures, and to record any maintenance would use forms currently required by the FAA.

The FAA computed the annual recordkeeping (Total Pages) burden by analyzing the necessary paperwork requirements needed to satisfy each process of the rule.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade

Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the previously identified threshold. These analyses are summarized as follows.

Aviation Industry Affected

The rule affects Boeing, Airbus, and operators of certain Boeing and Airbus airplanes that have heated center wing tanks (HCWTs).[31]

Disposition of Comments

There were many comments on the Initial Regulatory Evaluation (IRE) associated with FRM. We accepted many of these comments. However, the volume and the technical nature of these comments require a more detailed response than is possible in this summary. As a result, the complete disposition of the economic comments and their effects on the economic analysis are contained in the complete Final Regulatory Evaluation, which is filed separately.

Period of Analysis and Affected Airplanes

The period of analysis begins in 2008 and concludes in 2042. We used a 10-year time period (2008–2017) to calculate the equipment installation costs for airplanes affected by the final rule. The end of the analysis period of 2042 captures the full operative lives of the 2009–2017 production airplanes.

The airplanes affected by the final rule include passenger airplanes with HCWTs manufactured prior to the 2009 production cut-in date. These airplanes will need to be retrofitted with FRM by 2017. In addition, these affected airplanes also include all production passenger and cargo airplanes with HCWTs that will be manufactured between 2009 and 2017 (except the B–787 and A380 that will be manufactured with FRM. Cargo airplanes manufactured before 2009 and cargo airplanes that have been or will be converted from passenger airplanes (conversion cargo airplanes) are not included unless FRM was installed while the airplane was used in passenger service.

Airplanes have an average 25-year life expectancy. Thus, the 2009 production airplanes will be retired in 2033 and the last of the production airplanes in this analysis (those produced in 2017) will be out of service by 2042. Similarly, all of the pre-2009 existing airplanes requiring retrofitting will be retired by 2033 (the 2008 production airplanes will be the last year of production airplanes will not have FRM installed as original equipment). Thus, the maintenance and fuel costs will begin in 2009 and continue to 2042 for production airplanes and will begin in 2010 and continue to 2033 for retrofitted airplanes.

During the analysis period the final rule will affect an estimated 5,110 airplanes, 5,022 retrofitted and production passenger airplanes (2,732 retrofitted and 2,290 production) and 88 production cargo airplanes (see Table 1). These airplanes will fly 370 million hours, 364 million for passenger airplanes and 6 million for production cargo. Of the 364 million passenger airplane flight hours, 303 million will be flown by airplanes with FRM and 61 million will be flown by airplanes without FRM. The airplanes without FRM will be those manufactured prior to 2009 until they are retired or retrofitted between 2008 and 2017.

TABLE 1.—SUMMARY OF THE TOTAL NUMBERS OF AIRPLANES AND FLIGHT HOURS AFFECTED BY THE RULE

Airplane category	Airplanes	Flight hours (millions)
PASSENGER PRODUCTION	2,290	199
RETROFITTED WITH FRM	2,732	105
NO FRM	.....	61
TOTAL PASSENGER	5,022	364
CARGO PRODUCTION	88	6
TOTAL	5,110	370

Risk of a HCWT Explosion

If there were no final rule and no SFAR 88, engineering analysis indicates that there would be 1 explosion for every 100 million HCWT airplane flight hours. Air carrier passenger airplanes would incur 3.64 explosions of which production airplanes would incur 1.99 explosions and retrofitted airplanes would incur 1.65 explosions. Of the retrofitted airplanes, 1.04 would occur to airplanes with FRM and 0.61 would occur to airplanes without FRM. Production cargo airplanes would incur 0.06 explosions. As, obviously, fractions of accidents do not occur, we describe the cumulative probability of the number of accidents in fractions of an accident for analytic purposes. For example, engineering analysis would project that the first accident would occur in 2012, the second one in 2019, the third one in 2026, and the final 0.64 of an accident in 2035. However, care

[31] The following airplane models are not included as HCWT airplanes: B–717; B–727; certain B–767 and B–777 models, A–321, A–330–200 and A380. In addition, the B–787 is not included because it needs FRM to comply with its existing Part 25 certification requirements.

should be taken in assuming that these rare events will necessarily occur in the forecasted year. As an illustration, in a 1,000 Monte Carlo simulation trials, 3 accidents occurred 233 times out of the 1000 trials. For those 3-accident cases, two accidents happened in the same year 25 times.

Number of HCWT Explosions Potentially Affected by the Rule

Our Monte Carlo analysis indicates that we cannot statistically reject the hypothesis that SFAR 88 is 50 percent effective in preventing these accidents. This analysis, in combination with the service history since the implementation of SFAR 88, indicates that a 50 percent SFAR 88 effectiveness rate is appropriate, but we conducted a sensitivity analysis using two other possible SFAR 88 effectiveness rates of 25 percent and 75 percent in the Final Regulatory Evaluation. Using a 50 percent SFAR 88 effectiveness rate, in the absence of this final rule, we calculate that there would be 1.82 HCWT air carrier passenger airplane explosions occurring to the HCWT airplanes during the time period of the analysis. As it will take time to install FRM, 77 percent of the flight hours will be flown by airplanes with FRM while 23 percent of the flight hours will be flown by airplanes without FRM. Thus, 1.52 air carrier passenger airplane HCWT explosions will be prevented by the rule and 0.3 HCWT explosions could occur to airplanes without FRM.

Percentage of In-Flight Explosions

Our engineering analysis determined that eighty percent of the accidents would occur in flight and twenty percent would occur on the ground.

Benefits

There are two types of benefits from preventing an airplane explosion. Direct safety benefits arise from preventing the resulting fatalities and property losses. Secondly, demand benefits arise from preventing the aviation demand losses resulting from the reduction in demand to fly, which will be a consequence of a loss of public confidence in commercial aviation safety following an airplane explosion. Further, the explosion that results from an electrical charge is indistinguishable (until the accident is investigated) from an explosion caused by a terrorist bomb. This uncertainty about the explosion cause may result in costly governmental and industry reactions to a perceived terrorist plot. However, the benefits preventing such a potential reaction is too speculative to provide a definitive quantitative benefit estimate, although we have quantified a possible estimate in Appendix A of the Regulatory Evaluation.

Quantified Demand Benefits

As discussed in the economic literature, there is a direct, immediate, but temporary decrease in air travel in the aftermath of a catastrophic air carrier passenger airplane explosion. We estimate the loss to the aviation industry to be $292 million from such an accident.

Quantified Direct Benefits

Direct Benefits From Preventing a HCWT Explosion—Assumptions and Values

- Final rule is published on January 1, 2008.
- Discount rate is 7 percent.
- Passenger airplanes would be retrofitted between 2010 and 2017.
- No airplane scheduled to be retired before 2018 will be retrofitted.
- Passenger airplanes have a 25-year service life.
- With no SFAR 88 and no FRM rule, a heated center wing tank (HCWT) airplane will have a fuel tank explosion every 100 million flight hours.
- Special Federal Air Regulation (SFAR) 88 will prevent half of the future explosions.
- Boeing and Airbus HCWT airplanes have equal explosion risks.
- 80 percent of the accidents will be catastrophic in-flight accidents; with an average of 142 fatalities for a passenger airplane and 2 fatalities for a cargo airplane.
- 20 percent of the accidents will occur on-the-ground with an average of 14 fatalities for a passenger airplane and no fatalities for a cargo airplane.
- The airplane is destroyed in an HCWT explosion.
- The value of a prevented fatality is $5.5 million.

Direct Benefits From Preventing a HCWT Explosion—Results

- The average undiscounted direct benefits from preventing an air carrier passenger airplane in-flight HCWT explosion will be $841 million, with a range of $628 million to $2.2 billion.
- The average undiscounted direct benefits from preventing an air carrier passenger airplane on-the-ground HCWT explosion will be $115 million, with a range of $77 million to $320 million.
- The average undiscounted direct benefits from preventing an air carrier passenger airplane HCWT explosion weighted by an 80 percent probability of an in-flight accident and a 20 percent probability of an on-the-ground accident will be $696 million.
- The average undiscounted direct benefits from preventing an air carrier cargo airplane HCWT explosion will be $77 million.

Total Benefits

Of great concern to the FAA is that a practical solution now exists for a real threat of an aviation catastrophe. Even though these are low probability accidents, they are high consequence accidents. For example, if a single in-flight catastrophic accident with 190 occupants (235 seats) is prevented by 2012, the present value of the benefits will be greater than the present value of the costs. Using a $5.5 million value for a prevented fatality, the benefits from preventing an in-flight explosion range of $625 million to $750 million for a B–737 or an A–320 family airplane to $1.0 billion to $2.15 billion for all other affected airplanes. The mean of the estimated benefits from preventing an in-flight explosion (weighted by the number of flight hours for each type of affected airplane model) are $840 million.

Thus, the undiscounted total weighted average benefit from preventing an in-flight explosion is $1.130 billion. Adjusting this value for the 20 percent of the accidents that will occur on the ground produces an undiscounted average benefit of about $1 billion.

We calculated that the present value of the weighted average benefits from preventing the 1.5 accidents would be $657 million.

Compliance Cost Assumptions and Values

The compliance costs are based on installing a fuel tank inerting (FTI) system because that is the only FRM system that has been developed. If a future FRM system is developed that competes with FTI then we have likely overestimated the compliance costs.

- Fully burdened aviation engineer labor rate is $110 an hour.
- Fully burdened aviation mechanic labor rate is $80 an hour.
- One-time engineering costs to develop STCs or modified TCs are between $2.2 million to $5.7 million a model.
- Retrofitting kits cost from $77,000 (B–737 and A–320 Family), $120,000–$164,000 (B–757, B–767, and A–300/310), to $165,000–$192,000 (all other airplanes).
- Initial retrofitting labor costs in 2010 will range from $24,000 to $70,000.

• There is a retrofitting labor learning curve of 30 percent such that the retrofitting labor hours (and costs) will be approximately 70 percent of the 2010 labor hours in 2013 and 49 percent of the 2010 labor hours by 2017.

• Retrofitting kit and labor costs in 2010 will range from $100,000 for the B–737 and A–320 Family and $148,000 to $203,000 (for all other airplanes).

• Out-of-Service Losses (Associated with a retrofit during a routine ''D'' check) are $10,000 to $28,000.

• Out-of-Service Losses (Associated with a retrofit during a special maintenance session) are $30,000 to $84,000.

• The same reduction in hours out-of-service for labor hours will apply to the number of out-of-service hours.

• Retrofitting kits weigh 84 pounds (for the B–737 and the A–320 family), 117 pounds to 150 pounds (for the B–757, B–767, and A–300/310), and 182 pounds to 215 pounds for the B–747, B–777, and A–330/340).

• Retrofitted airplane increased annual fuel burn from weight, bleed air intake, and ram drag is 2,000–2,500 gallons (B–737) to 4,000 gallons (A–320 Family) to 4,400 to 6,500 gallons (everything else).

• Production airplane FTI kit costs are $92,000 (B–737 and A–320) to $186,000–$205,000 (for all other airplanes).

• Production airplane labor installation costs are $6,500–$8,000.

• Production kit and labor costs in 2009 will be $100,000 for the B–737 and A–320 Family) and $195,000 to $212,500 (for all other airplanes).

• Production airplane FTI weight is 105 pounds (B–737 and A–30 Family) to 250–300 pounds (for all other airplanes).

• Production airplane increased annual fuel burn from weight, bleed air intake, and ram drag is 2,900 gallons (B–737) to 4,600 gallons (A–320 Family) to 6,300 to 7,100 gallons (everything else).

• Cost of aviation fuel is $2.01 per gallon.

• Additional scheduled and unscheduled maintenance, delays, and water separator/filter replacement costs are $3,250 to $5,150.

• Annual operating costs are between $10,000 (B–737) to $15,000 (A–320 Family) to $17,500–$20,000 (for all other airplanes).

• Air separation module (ASM) replaced every 27,000 flight hours.

• ASM replacement cost is $45,000 (B–737 and A–320 Family) to $135,000–$153,000 (for all other airplanes).

Weighted average compliance costs (excluding the engineering costs) are:

Retrofitted Passenger Airplanes: $213,000 ($135,000 for retrofit and $78,000 for operational). *Range:* $144,000 to $395,000.

Production Passenger Airplanes: $177,000 ($68,000 for installation and $109,000 for operational). *Range:* $156,000 to 410,000.

Total Compliance Costs

As shown in Table 2, the present value of the total compliance costs is $1.012 billion, of which $975 million will be incurred by air carrier passenger airplane operators, and $37 million will be incurred by air carrier production cargo airplanes.

Of the air carrier passenger airplane present value costs of $975 million, operators of retrofitted airplanes will incur $436 million (43 percent) while operators of production airplanes will incur $539 million (57 percent).

TABLE 2.—COMPLIANCE COSTS BY TYPE OF OPERATION AND TYPE OF AIRPLANE

[In millions of 2007 dollars]

Operator	Total costs		
	Undiscounted	Present value (7%)	Present value (3%)
AIR CARRIER PASSENGER:			
RETROFITTED	$839	$436	$623
PRODUCTION	1,237	539	825
AUXILIARY FUEL TANKS	<1	<1	<1
TOTAL	2,076	975	1,448
AIR CARRIER CARGO:			
PRODUCTION	100	37	63
TOTAL	100	37	63
GRAND TOTAL	2,176	1,012	1,511

As shown in Table 3, 54 percent of the present value costs (at 7 percent) for retrofitted air carrier passenger airplanes are from the engineering and one-time equipment installation costs while these costs are 47 percent for production airplanes. Similarly, 46 percent of the present value costs for retrofitted airplanes are due to additional fuel, operational, and ASM (air separation module) costs while these costs are 53 percent for production airplanes.

TABLE 3.—COMPLIANCE COSTS FOR AIR CARRIER PASSENGER AIRPLANES

[In millions of 2007 dollars]

Cost category	Total costs		
	Undiscounted	Present value (7%)	Present value (3%)
RETROFITTED:			
ENGINEERING	$19	$16	$18
INSTALLATION	346	220	283
INVENTORY	9	6	7
FUEL	215	93	149
OPERATIONAL	113	49	77

TABLE 3.—COMPLIANCE COSTS FOR AIR CARRIER PASSENGER AIRPLANES—Continued

[In millions of 2007 dollars]

Cost category	Total costs		
	Undiscounted	Present value (7%)	Present value (3%)
ASM REPLACEMENT	137	52	89
TOTAL	839	436	623
PRODUCTION:			
ENGINEERING	107	100	103
INSTALLATION	230	152	191
INVENTORY	7	4	5
FUEL	459	149	272
OPERATIONAL	197	63	116
ASM REPLACEMENT	237	71	138
TOTAL	1,237	539	825
GRAND TOTAL	2,076	975	1,448

Benefit Cost Analysis

As previously described, these are low probability, high consequence accidents. If a single in-flight catastrophic accident with 190 occupants (a 235 seat airplane) were to be prevented by 2012, the present value of the benefits will be greater than the present value of the costs. Further, as shown in the Regulatory Evaluation in Appendix IV–7, there is a 26 percent probability that the final rule present value benefits will be greater than its present value costs.

As shown in Table 4, using the weighted average benefits at a 7 percent discount rate, the net benefit losses for the final rule would be $355 million, of which production passenger airplanes would account for $151 million, retrofitted passenger airplanes would account for $167 million and production cargo airplanes would account for $37 million.

TABLE 4.—PRESENT VALUE OF THE RULE BENEFITS AND COSTS

[In millions of 2007 dollars]

Type of operation	Present value (7%)		
	Benefits	Costs	Net benefits
PASSENGER:			
RETROFITTED	$271	$438	($167)
PRODUCTION	386	537	(151)
TOTAL	657	975	(318)
PRODUCTION CARGO	<1	37	(37)
GRAND TOTAL	657	1,012	(355)

Sensitivity Analysis of the Rule Costs and Benefits

Table 5 provides a sensitivity analysis for the final rule that, using the weighted by flight hours average benefit value, varies the discount rate (7 and 3 percent), the value of preventing a statistical fatality ($3 million, $5.5 million, and $8 million), and the SFAR 88 effectiveness rate (25, 50, and 75 percent). As is shown, the quantified benefits are greater than the costs when the SFAR 88 effectiveness rate is 25 percent for: (1) An $8 million value of a prevented fatality and; (2) a $5.5 million value of a prevented fatality using a 3 percent discount rate. Net benefits numbers in parentheses are negative.

TABLE 5.—PRESENT VALUES OF THE BENEFITS AND COSTS FOR ALL AFFECTED AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE

[In millions of 2007 dollars]

Discount rate	Value of fatality	SFAR 88 effectiveness (percent)	Present values		
			Benefits	Costs	Net benefits
7%	$5.5	50	$657	$1,012	($355)
7%	3	50	469	1,012	(543)
7%	8	50	828	1,012	(184)
7%	5.5	25	989	1,012	(23)
7%	3	25	704	1,012	(308)

TABLE 5.—PRESENT VALUES OF THE BENEFITS AND COSTS FOR ALL AFFECTED AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE—Continued

[In millions of 2007 dollars]

Discount rate	Value of fatality	SFAR 88 effectiveness (percent)	Present values		
			Benefits	Costs	Net benefits
7%	8	25	1,242	1,012	230
7%	5.5	75	330	1,012	(682)
7%	3	75	235	1,012	(777)
7%	8	75	414	1,012	(598)
3%	5.5	50	1,141	1,509	(368)
3%	3	50	842	1,509	(667)
3%	8	50	1,434	1,509	(75)
3%	5.5	25	1,658	1,509	149
3%	3	25	1,263	1,509	(246)
3%	8	25	2,151	1,509	642
3%	5.5	75	517	1,509	(992)
3%	3	75	421	1,509	(1,088)
3%	8	75	717	1,509	(792)

Differences Between the Initial Regulatory Evaluation (IRE) and Final Regulatory Evaluation (FRE) Assumptions and Unit Values

In the IRE, we had estimated that the present value of the proposed rule's direct benefits would be $495 million and that the present value of the proposed rule's costs would be $808 million. Table 6 provides a summary of the important differences in the assumptions and the unit values between those in the IRE and those used in this FRE. The significant benefits increases are due to the quantification of the demand benefits and the use of $5.5 million for the value of a prevented fatality. In the final rule the benefits and costs were both substantially increased by the inclusion of Boeing production airplanes (except the B–787). In the NPRM analysis we assumed Boeing would voluntarily comply for its production airplanes; we did not assume this for the final rule analysis. The benefits and costs were both decreased by the shorter period of analysis. The significant cost increases are due to the increases in the production FTI kit costs, their annual additional fuel consumption due to the FTI weights and the bleed air and ram drag effects, the increased price of aviation fuel, and the air separation module (ASM) replacement costs (there will be 1 ASM replacement for most retrofitted airplanes and 2 ASM replacements for most production airplanes).

TABLE 6.—DIFFERENCES IN THE ASSUMPTIONS/VALUES IN THE IRE AND IN THE FRE

Assumptions/values	FRE	IRE
Time Period of Analysis	2009–2042	2006–2055.
Accident Rate	1 Every 100 Million HCWT Flight Hours	1 Every 60 Million HCWT Flight Hours.
Number of Flight Hours	370 Million Total 364 Million Passenger. 6 Million Production Cargo..	460 Million.
Number of Accidents	3.7 Total 3.64 Passenger. 0.06 Cargo.	7.67.
Percentage of In-Flight Accidents	80%	100%.
Base Year for Dollars	2007	2004.
Reduction in Air Travel Demand	$292 Million (annual real growth rate of 3%)	Qualitatively large.
Value of a Prevented Fatality	$5.5 Million	$3 Million.
Average Number of In-Flight Fatalities	142	142.
Average Number of On-the-Ground Fatalities	14	8.
Average Accident Value for an In-Flight Explosion (Passenger Airplane).	$841 Million	$505 Million.
Average Accident Value for an On-the-Ground Explosion (Passenger Airplane).	$115 Million	Not Estimated.
Weighted Average Accident Value (Passenger Airplane)	$696 Million	$505 Million.
Weighted Average Accident Value (Production Cargo Airplane).	$77 Million	$75 Million.
Hourly Labor Rates	Engineer $110	Engineer $115.
	Mechanic $80	Mechanic $75.
Total Number of Retrofits	Passenger 2,732	Passenger 3,328.
	Boeing 1,780	Boeing 2,327.
	Airbus 952	Airbus 1,001.
Retrofitting Kit Costs	Small $77,000	Small $105,000.
	Medium $120,000–$164,000	Medium $135,000.
	Large $175,000–$192,000	Large $179,000.
Retrofitting Labor Costs (Scheduled Maintenance)	$24,000–$28,000	$30,000–$35,000.

TABLE 6.—DIFFERENCES IN THE ASSUMPTIONS/VALUES IN THE IRE AND IN THE FRE—Continued

Assumptions/values	FRE	IRE
Number of Out-of-Service Days (Scheduled Maintenance).	2	2.
Out-of-Service Costs (Scheduled Maintenance)	Small $10,000	Small $9,000.
	Medium $22,000	Medium $14,000.
	Large $28,000	Large $13,000.
Retrofitting Costs (Scheduled Maintenance)	Small $110,000	Small $135,000.
	Medium $165,000–$215,000	Medium $170,000.
	Large $214,000–$229,000	Large $214,000.
Retrofitting Labor Costs (Dedicated Visit)	$62,000–$70,000	$40,000–$45,000.
Number of Out-of-Service Days (Dedicated Visit)	6	4.
Out-of-Service Costs (Dedicated Visit)	Small $30,000	Small $19,000.
	Medium $66,000	Medium $56,000.
	Large $84,000	Large $53,000.
Retrofitting Costs (Dedicated Visit)	Small $137,000	Small $163,000.
	Medium $211,000–$264,000	Medium $234,000.
	Large $289,000–$311,000	Large $276,000.
Fuel Cost per Gallon	$2.01	$1.00.
Retrofitting FTI Weight	Small 84 lbs	Small 95 lbs.
	Medium 117–150 lbs	Medium 148 lbs.
	Large 182–215 lbs	Large 218 lbs.
Annual Retrofitted Passenger Airplane Fuel Consumption (Weight, Bleed Air, and Ram Drag).	Small 2,500–4,000 Gals	Small 1,500–3,900.
	Medium 3,000–4,125 Gals	Medium 2,900.
	Large 4,500–6,550 Gals	Large 4,800.
Annual Retrofitted Passenger Airplane Fuel Cost	Small $5,250–$8,000	Small $1,500–$3,900.
	Medium $6,000–$8,300	Medium $2,900.
	Large $9,000–$13,150	Large $4,800.
Total Number of Production Passenger Airplanes	Total 2,290 (2009–2017)	Total 3,274 (2008–2030).
	Boeing 1,268	Boeing 0.
	Airbus 1,022	Airbus 2,650.
Total Number of Production (No Conversion) Cargo Airplanes.	Total 88 (2009–2017)	Total 624 (2008–2030).
	Boeing 66	Boeing 0.
	Airbus 22	Airbus 624 (includes Conversion).
Production Kit Costs	Small $92,000	Small $83,000.
	Medium $186,000	Medium $107,000.
	Large $205,000	Large $137,000.
Production Labor Costs	$6,500–$8.000	$7,000–$8.000.
Unit Production Costs	Small $98,000	Small $90,000.
	Medium $194,000	Medium $115,000.
	Large $213,000	Large $145,000.
Production FTI Weight	Small 105 lbs	Small 95 lbs.
	Medium 280 lbs	Medium 148 lbs.
	Large 300 lbs	Large 218 lbs.
Annual Production Passenger Airplane Fuel Consumption (Weight, Bleed Air, and Ram Drag).	Small 2,300–4,625 Gals	Small 1,500–3,900.
	Medium 5,600–6,725 Gals	Medium 2,900.
	Large 6,850–8,600 Gals	Large 4,800.
Annual Production Passenger Airplane Fuel Cost	Small $3,850–$7,625	Small $1,500–$3,900.
	Medium $9,250–$11,100	Medium $2,900.
	Large $11,300–$14,300	Large $4,800.
Maintenance	$3,250–$5,150	$5,900–$7,500.
ASM Replacement Cost (Every 9 Years)	Small $30,500–$45,000	Small $5,275.
	Medium $135,000	Medium $18,761.
	Large $153,000	Large $28,814.

Costs and Benefits of Alternatives to the Final Rule

As shown in Table 7, we evaluated the baseline costs and weighted average benefits for the 8 alternatives to the final rule using a value of $5.5 million for a prevented fatality, a 7 percent discount rate, and a 50 percent SFAR 88 effectiveness rate. These expected benefits are based on a rare event mean probability. The date when an avoided accident occurs has a significant impact on the expected benefits.

ALTERNATIVE 1. Cover only air carrier passenger airplanes

ALTERNATIVE 2. Exclude auxiliary fuel tanks

ALTERNATIVE 3. Cover only air carrier retrofitted passenger airplanes

ALTERNATIVE 4. Cover only air carrier production passenger airplanes

ALTERNATIVE 5. Cover only air carrier production passenger and cargo airplanes

ALTERNATIVE 6. Final rule plus part 91 airplanes

ALTERNATIVE 7. Final rule plus conversion cargo airplanes

ALTERNATIVE 8. Final rule plus conversion and retrofitted cargo airplanes

TABLE 7.—BENEFITS AND COST SUMMARIES FOR 8 ALTERNATIVES TO THE FINAL RULE USING A $5.5 MILLION VALUE FOR A PREVENTED FATALITY, A 7 PERCENT DISCOUNT RATE, AND A 50 PERCENT SFAR 88 EFFECTIVENESS RATE

[In millions of 2007 dollars]

Option	Present value (7%)		Net benefits
	Benefits	Costs	
FINAL RULE	$657	$1,012	($355)
ALTERNATIVES:			
1. Cover Only Part 121 Passenger Airplanes (excludes Part 121 cargo and Part 91)	657	975	(318)
2. Cover Only Part 121 Passenger Airplanes but No Auxiliary Tanks	657	975	(318)
3. Cover Only Part 121 Retrofitted Passenger Airplanes (excludes All Production Passenger, all Cargo, and Part 91 Airplanes)	271	438	(167)
4. Cover Only Part 121 Production Passenger Airplanes	386	537	(151)
5. Cover Only Part 121 Production Passenger and Cargo Airplanes	386	574	(188)
6. Final Rule Plus Part 91 Airplanes	657	1,026	(369)
7. Final Rule Plus Conversion Cargo Airplanes	657	1,109	(452)
8. Final Rule Plus Conversion and Retrofitted Cargo Airplanes	657	1,229	(572)

Another way to analyze these alternatives is to evaluate them on an incremental cost per life saved; i.e., a cost-effectiveness analysis. For this rule, the effectiveness metric is the number of expected prevented fuel tank explosions, which is then converted into the present value of the number of fatalities prevented. The mid-point of the time-frame in which an accident would happen is 2022 for production airplanes and 2019 for retrofitted airplanes. For all other airplanes, the mid-point would be about 50 years from today, or 2060. In Table 8, the first column lists the specific types of airplanes that could have FRM installed. The second column reports the number of fuel tank explosions that FRM would prevent using an SFAR 88 effectiveness rate of 50 percent. The third column provides the present value of the total costs to install FRM on those airplanes minus the present value of the destroyed airplane and minus the demand benefits weighted by the number of flight hours. The passenger airplane hull value is $50, which gives present values of $19 million for production airplanes and $24 million for retrofitted airplanes. The present value of the demand benefits would be $100 million for retrofitted airplanes and $151 million for production airplanes. The fourth column takes the number of prevented explosions and divides it into the costs to calculate the present value of the cost to prevent one explosion. The fifth column provides the number of fatalities that would be prevented if FRM were installed on the airplane assuming that 80 percent of the explosions would be in-flight and 20 percent would be on the ground. These numbers are then adjusted by the discount rate to reflect the present value of the fatalities for production and retrofitted passenger airplanes. The final column supplies the average present value of the cost for that option to prevent one fatality. As shown in Table 8, the two most cost-effective options would be to install FRM on production passenger airplanes and on existing passenger airplanes. The final rule contains all of the options except conversion cargo airplanes and retrofitted cargo airplanes.

TABLE 8.—INCREMENTAL COST EFFECTIVENESS ANALYSIS OF THE INDIVIDUAL ALTERNATIVES USING A PRESENT VALUE ANALYSIS WITH A 7 PERCENT DISCOUNT RATE AND A 50 PERCENT SFAR 88 EFFECTIVENESS RATE

[Total costs in millions of 2007 dollars]

Options	Number of explosions prevented	PV	PV	Average No. of fatalities	PV
		Costs—hull and demand loss	Cost to prevent one accident		Cost to prevent 1 statistical fatality
Production Passenger Airplanes	1.00	$367	$367	46	$8.000
Production Cargo Airplanes	0.0385	37	961	.055	17,473.000
Production Part 91 Airplanes	0.00082	2	2,439	.249	9,785.000
Retrofitted Passenger Airplanes	0.52	314	604	56	11.000
Conversion Cargo Airplanes	0.095	83	874	.055	15,891.000
Retrofitted Cargo Airplanes	0.064	110	1,719	.055	31,255.000
Retrofitted Part 91 Airplanes	0.0194	12	6,186	.249	24,843.000
Final Rule	1.5585	741	475	49	10.000

Conclusion

When modeling discrete rare events such as fuel tank explosions, it is important to understand and evaluate the distribution around the mean value rather than to rely only on a single point estimated value. This variability analysis indicates there is a substantial (23 percent) probability that the quantified benefits will be greater than the costs.

The Federal Aviation Administration believes that the correct public policy choice is to eliminate the substantial probability of a high consequence fuel tank explosion accident by proceeding with the final rule.

Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of

applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

We believe that this final rule will have a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination. The FAA has determined that:

—There will not be a significant impact on a substantial number of manufacturers.
—There will be a significant impact on a substantial number of small operators.

To make this determination in this final rule, we perform a Regulatory Flexibility Analysis (RFA). Under Section 63(b) of the RFA, the analysis must address:

—Description of reasons the agency is considering the action.
—Statement of the legal basis and objectives for the rule.
—Significant issues raised during public comment.
—Description of the recordkeeping and other compliance requirements of the rule.
—All federal rules that may duplicate, overlap, or conflict with the rule.
—Description and an estimated number of small entities.
—Economic impact.
—Describe the alternatives considered.

Description of Reasons the Agency Is Considering the Action

Fuel tank explosions have been a threat with serious aviation safety implications for many years. The explosion of TWA Flight 800 (a Boeing 747) off Long Island, New York in 1996 occurred in-flight with the loss of all 230 on board. Two other explosions on airplanes operated by Philippine Airlines and Thai Airlines occurred on the ground (resulting in nine fatalities). While the accident investigations of the TWA, Philippine Airlines, and Thai Airlines accidents failed to identify the ignition source that caused the explosion, the investigations found several similarities

The requirements contained in this final rule will reduce the likelihood of fuel tank fires, and mitigate the effects of a fire if one occurs.

Statement of the Legal Basis and Objectives for the Rule

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of aviation safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes:

- New safety standards for the design of transport category airplanes, and
- New requirements necessary for safety for the design, production, operation and maintenance of those airplanes, and for other practices, methods, and procedures related to those airplanes.

Accordingly, this final rule amends Title 14 of the Code of Federal Regulations and address deficiencies in current regulations regarding airplane designs of the current and future fleet. The rule will require transport category airplanes to minimize flammability of fuel tanks.

Significant Issues Raised During Public Comment

Individuals and companies commented that they will incur costs as a result of the requirements contained in the rule. The National Air Carrier Association (NACA) supports FRM being applied to production passenger airplanes. They oppose applying FRM to existing passenger airplanes and to any cargo airplanes. Their primary concerns were that the cost of retrofitting passenger airplanes was too high for the potential benefits and they believe that cargo airplanes were not at risk. They did not provide specific cost estimates. The Regional Airline Association (RAA) opposes any FRM requirement, although only one of their member airlines has airplanes that will be affected by the final rule.

Description of the Recordkeeping and Other Compliance Requirements of the Rule

We expect no more than minimal new reporting and recordkeeping compliant requirements to result from this rule. The rule will require additional entries in existing required maintenance records to account for either the additional maintenance requirements or the installation of nitrogen-inerting systems and the addition of insulation between heat-generating equipment and fuel tanks.

All Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

SFAR 88 was enacted to ensure no ignition sources exist in the fuel tanks. After that rule was promulgated and the manufacturers' safety analyses were submitted to the regulatory authorities, we continued to find ignition sources that had not been revealed in the safety analyses. Thus, SFAR 88 cannot eliminate all future ignition sources. This rule is designed to work in conjunction with SFAR 88 to prevent future HCWT explosions. We are unaware that the rule will overlap, duplicate or conflict with any other existing Federal Rules.

Description and an Estimated Number of Small Entities

The FAA uses the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing specifying companies having less than 1,500 employees as small entities. Boeing is the sole U.S. manufacturer affected by this final rule. As Boeing has more than 1,500 employees and is not considered a small entity, there will not be a significant impact on a substantial number of manufacturers.

We identified a total of 15 U.S. operators who will be affected by this final rule and qualify as small businesses because they have fewer than 1,500 employees. These 15 entities operate a total of 214 airplanes. Once the firms were classified as small entities, we gathered information on their annual revenues.

We obtained the small entities' fleets using data from FAA Flight Standards and BACK Associates Fleet Database. The number of employees and revenues

were obtained from the U.S. Department of Transportation Form 41 filings, BTS Office of Airline Information, Hoovers Online, and Thomas Gale Business and Company Resource Center.

Economic Impact

To assess the cost impact to small business part 121 airlines, we estimated the present value retrofit cost for the affected aircraft in the small entities fleet. Table 8 summarizes the cost to retrofit per airplane and the associated model types.

TABLE 8.—RETROFIT COST BY AIRPLANE MODEL

Model	Present value cost
Retrofit Cost Per Model:	
B–737–Classic	$137,000
B–737–NG	121,000
B–757	211,000
B–767	264,000
B747–100/100/300	289,000
B–747–400	289,000
B–777	311,000
A–320 Family	137,000
A–330	311,000

We estimated each operator's compliance cost by multiplying the average retrofit cost per airplane by the total number of each type of airplane the operator currently has. Then we measured the economic impact on small entities by dividing the firms' total estimated present value compliance cost by its annual revenue. We believe that if the retrofit cost exceeds 2% of a firm's annual revenue, then there is a significant economic impact. As shown in the following table, the present value of the retrofitting costs is estimated to be greater than two percent of annual revenues for three small operators. Thus, as the rule will have a significant economic impact on three small operators we determined this final rule will have a significant impact on a substantial number of small entities.

TABLE 9.—TOTAL RETROFITTING COSTS AND THEIR PERCENTAGE OF ANNUAL REVENUES FOR THE AFFECTED SMALL OPERATORS

Airplane model	Small entity operator	Number of affected aircraft	Cost	Annual revenue	Cost as a percent of revenue
BOEING 737–700	ALOHA AIRLINES	2	$242,000		
BOEING 737–700	ALOHA AIRLINES	5	605,000		
BOEING 737–700	ALOHA AIRLINES	1	121,000		
Total			968,000	$300,601,582	0.32
BOEING 737–300	ATA AIRLINES	3	411,000		
BOEING 737–800	ATA AIRLINES	11	1,331,000		
BOEING 737–800	ATA AIRLINES	1	121,000		
BOEING 757–200	ATA AIRLINES	4	1,055,000		
BOEING 757–200	ATA AIRLINES	2	422,000		
BOEING 757–300	ATA AIRLINES	4	844,000		
Total			4,184,000	330,177,135	1.27
BOEING 757–200	EOS AIRLINES	3	633,000	1,084,907	58.350
AIRBUS A318–100	FRONTIER AIRLINES [CO-USA]	8	1,096,000		
AIRBUS A319–100	FRONTIER AIRLINES [CO-USA]	39	5,343,000		
AIRBUS A319–100	FRONTIER AIRLINES [CO-USA]	10	1,370,000		
Total			7,809,000	1,130,837,682	0.69
BOEING 767–300	HAWAIIAN AIRLINES	4	1,056,000		
BOEING 767–300	HAWAIIAN AIRLINES	8	2,112,000		
BOEING 767–300	HAWAIIAN AIRLINES	3	792,000		
BOEING 767–300	HAWAIIAN AIRLINES	3	792,000		
Total			4,752,000	881,599,398	0.54
BOEING 767–200	MAXJET AIRWAYS	1	264,000		
BOEING 767–200	MAXJET AIRWAYS	1	264,000		
BOEING 767–200	MAXJET AIRWAYS	1	264,000		
Total			792,000	2,422,199	32.70
BOEING 737–400	MIAMI AIR INTERNATIONAL	2	274,000		
BOEING 737–800	MIAMI AIR INTERNATIONAL	3	363,000		
BOEING 737–800	MIAMI AIR INTERNATIONAL	1	121,000		
BOEING 737–800	MIAMI AIR INTERNATIONAL	1	121,000		
BOEING 737–800	MIAMI AIR INTERNATIONAL	2	121,000		
Total			1,000,000	73,403,477	1.36
BOEING 757–200	PRIMARIS AIRLINES	1	211,000	19,403,658	1.09
BOEING 737–300	RYAN INTERNATIONAL AIRLINES	1	137,000		
BOEING 737–400	RYAN INTERNATIONAL AIRLINES	1	137,000		
BOEING 737–800	RYAN INTERNATIONAL AIRLINES	2	242,000		
BOEING 737–800	RYAN INTERNATIONAL AIRLINES	1	121,000		

TABLE 9.—TOTAL RETROFITTING COSTS AND THEIR PERCENTAGE OF ANNUAL REVENUES FOR THE AFFECTED SMALL OPERATORS—Continued

Airplane model	Small entity operator	Number of affected aircraft	Cost	Annual revenue	Cost as a percent of revenue
BOEING 737–800	RYAN INTERNATIONAL AIRLINES	1	121,000		
BOEING 757–200	RYAN INTERNATIONAL AIRLINES	1	211,000		
BOEING 757–200	RYAN INTERNATIONAL AIRLINES	1	211,000		
BOEING 757–200	RYAN INTERNATIONAL AIRLINES	2	422,000		
Total			1,602,000	101,560,750	1.58
AIRBUS A319–100	SPIRIT AIRLINES [USA]	30	4,100,000		
AIRBUS A321–100	SPIRIT AIRLINES [USA]	6	822,000		
Total			4,922,000	540,426,363	0.91
BOEING 737–800	SUN COUNTRY AIRLINES	2	242,000		
BOEING 737–800	SUN COUNTRY AIRLINES	6	726,000		
BOEING 737–800	SUN COUNTRY AIRLINES	2	242,000		
BOEING 737–800	SUN COUNTRY AIRLINES	3	363,000		
Total			1,573,000	225,789,595	0.70
AIRBUS A320–100	USA 3000 AIRLINES	1	137,000		
AIRBUS A320–100	USA 3000 AIRLINES	1	137,000		
AIRBUS A320–100	USA 3000 AIRLINES	9	1,233,000		
Total			1,507,000	132,077,603	1.14
B–737–429	CASINO EXPRESS	1	137,000		
B–737–46B	CASINO EXPRESS	1	137,000		
B–737–4S3	CASINO EXPRESS	1	137,000		
B–737–8Q8	CASINO EXPRESS	2	242,000		
B–737–8Q8	CASINO EXPRESS	1	121,000		
B–737–86N	CASINO EXPRESS	1	121,000		
Total			895,000	34,178,453	2.62
B–737–3Y0	PACE AIRLINES	1	137,000		
B–757–256	PACE AIRLINES	1	137,000		
B–757–236	PACE AIRLINES	1	137,000		
Total			411,000	40,411,353	1.02

Describe the Alternatives Considered

As described in the Analysis of Alternatives section, we evaluated the following 8 alternatives to the final rule.

ALTERNATIVE 1. Cover only air carrier passenger airplanes

ALTERNATIVE 2. Exclude auxiliary fuel tanks

ALTERNATIVE 3. Cover only air carrier retrofitted passenger airplanes

ALTERNATIVE 4. Cover only air carrier production passenger airplanes

ALTERNATIVE 5. Cover only air carrier production passenger and cargo airplanes

ALTERNATIVE 6. Final rule plus part 91 airplanes

ALTERNATIVE 7. Final rule plus conversion cargo airplanes

ALTERNATIVE 8. Final rule plus conversion and retrofitted cargo airplanes

Our conclusion was that the final rule provided the best balance of cost and benefits for the United States society. Whether an airplane is flown by a small entity or by a large entity, the risk is largely the same. Consequently, we determined that the final rule should apply to all passenger airplanes and to production cargo airplanes.

Regulatory Flexibility Analysis Summary

As the rule will have a significant economic impact on three small operators, we determined this final rule will have a significant impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards are not considered unnecessary obstacles to the foreign commerce of the United States, when the standards have a legitimate domestic objective, such as the protection of safety, and when the standards do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose of this rule is to ensure the safety of the American public. We have assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this rule is not considered as creating unnecessary obstacles to foreign commerce.

Unfunded Mandates 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 (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

There will be 3 years (2015, 2016, and 2017) in which the undiscounted costs will be greater than $136.1 million. Consequently, in Table 7 of the regulatory evaluation summary, we evaluated the costs and benefits of 8 alternatives to the final rule.

Executive Order 13132, Federalism

The FAA has analyzed this 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, 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.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions, as he or she considers appropriate. Because this rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Nevertheless, the FAA has determined that it is inappropriate to relieve intrastate aviation interests in Alaska from the requirements of today's rule because of the safety objective served by this rule.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Submission of Comments

Request for Comments

Comments should be submitted to Docket No. FAA–2005–22997 by January 20, 2009. Comments may be submitted to the docket using any of the means listed in the Addresses section below.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

Privacy Act: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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*.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

ADDRESSES: You may send comments identified by Docket Number FAA–2004–22997 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Fax:* Fax comments to the Docket Operations at 202–493–2251.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*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 submitting 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 docket number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SFREFA) of 1996 requires FAA to comply with

small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR part 25

Aircraft, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements.

14 CFR part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

V. The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14, Code of Federal Regulations (CFR) parts 25, 26, 121, 125, and 129, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Part 25 is amended by adding a new § 25.5 to read as follows:

§ 25.5 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), and at FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) The following materials are available for purchase from the following address: The National Technical Information Services (NTIS), Springfield, Virginia 22166.

(1) Fuel Tank Flammability Assessment Method User's Manual, dated May 2008, document number DOT/FAA/AR–05/8, IBR approved for § 25.981 and Appendix N. It can also be obtained at the following Web site: *http://www.fire.tc.faa.gov/systems/fueltank/FTFAM.stm*.

(2) [Reserved]

■ 3. Amend § 25.981 by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 25.981 Fuel tank explosion prevention.

* * * * *

(b) Except as provided in paragraphs (b)(2) and (c) of this section, no fuel tank Fleet Average Flammability Exposure on an airplane may exceed three percent of the Flammability Exposure Evaluation Time (FEET) as defined in Appendix N of this part, or that of a fuel tank within the wing of the airplane model being evaluated, whichever is greater. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed Equivalent Conventional Unheated Aluminum Wing Tank.

(1) Fleet Average Flammability Exposure is determined in accordance with Appendix N of this part. The assessment must be done in accordance with the methods and procedures set forth in the Fuel Tank Flammability Assessment Method User's Manual, dated May 2008, document number DOT/FAA/AR–05/8 (incorporated by reference, see § 25.5).

(2) Any fuel tank other than a main fuel tank on an airplane must meet the flammability exposure criteria of Appendix M to this part if any portion of the tank is located within the fuselage contour.

(3) As used in this paragraph,

(i) *Equivalent Conventional Unheated Aluminum Wing Tank* is an integral tank in an unheated semi-monocoque aluminum wing of a subsonic airplane that is equivalent in aerodynamic performance, structural capability, fuel tank capacity and tank configuration to the designed wing.

(ii) *Fleet Average Flammability Exposure* is defined in Appendix N to this part and means the percentage of time each fuel tank ullage is flammable for a fleet of an airplane type operating over the range of flight lengths.

(iii) *Main Fuel Tank* means a fuel tank that feeds fuel directly into one or more engines and holds required fuel reserves continually throughout each flight.

(c) Paragraph (b) of this section does not apply to a fuel tank if means are provided to mitigate the effects of an ignition of fuel vapors within that fuel tank such that no damage caused by an ignition will prevent continued safe flight and landing.

(d) Critical design configuration control limitations (CDCCL), inspections, or other procedures must be established, as necessary, to prevent development of ignition sources within the fuel tank system pursuant to paragraph (a) of this section, to prevent increasing the flammability exposure of the tanks above that permitted under paragraph (b) of this section, and to prevent degradation of the performance and reliability of any means provided according to paragraphs (a) or (c) of this section. These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations section of the instructions for continued airworthiness required by § 25.1529. Visible means of identifying critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration control limitations (e.g., color-coding of wire to identify separation limitation). These visible means must also be identified as CDCCL.

■ 4. Part 25 is amended by adding a new APPENDIX M to read as follows:

APPENDIX M TO PART 25—FUEL TANK SYSTEM FLAMMABILITY REDUCTION MEANS

M25.1 *Fuel tank flammability exposure requirements.*

(a) The Fleet Average Flammability Exposure of each fuel tank, as determined in accordance with Appendix N of this part, may not exceed 3 percent of the Flammability Exposure Evaluation Time (FEET), as defined in Appendix N of this part. As a portion of this 3 percent, if flammability reduction means (FRM) are used, each of the following time periods may not exceed 1.8 percent of the FEET:

(1) When any FRM is operational but the fuel tank is not inert and the tank is flammable; and

(2) When any FRM is inoperative and the tank is flammable.

(b) The Fleet Average Flammability Exposure, as defined in Appendix N of this

part, of each fuel tank may not exceed 3 percent of the portion of the FEET occurring during either ground or takeoff/climb phases of flight during warm days. The analysis must consider the following conditions.

(1) The analysis must use the subset of those flights that begin with a sea level ground ambient temperature of 80° F (standard day plus 21° F atmosphere) or above, from the flammability exposure analysis done for overall performance.

(2) For the ground and takeoff/climb phases of flight, the average flammability exposure must be calculated by dividing the time during the specific flight phase the fuel tank is flammable by the total time of the specific flight phase.

(3) Compliance with this paragraph may be shown using only those flights for which the airplane is dispatched with the flammability reduction means operational.

M25.2 *Showing compliance.*

(a) The applicant must provide data from analysis, ground testing, and flight testing, or any combination of these, that:

(1) Validate the parameters used in the analysis required by paragraph M25.1 of this appendix;

(2) Substantiate that the FRM is effective at limiting flammability exposure in all compartments of each tank for which the FRM is used to show compliance with paragraph M25.1 of this appendix; and

(3) Describe the circumstances under which the FRM would not be operated during each phase of flight.

(b) The applicant must validate that the FRM meets the requirements of paragraph M25.1 of this appendix with any airplane or engine configuration affecting the performance of the FRM for which approval is sought.

M25.3 *Reliability indications and maintenance access.*

(a) Reliability indications must be provided to identify failures of the FRM that would otherwise be latent and whose identification is necessary to ensure the fuel tank with an FRM meets the fleet average flammability exposure requirements listed in paragraph M25.1 of this appendix, including when the FRM is inoperative.

(b) Sufficient accessibility to FRM reliability indications must be provided for maintenance personnel or the flightcrew.

(c) The access doors and panels to the fuel tanks with FRMs (including any tanks that communicate with a tank via a vent system), and to any other confined spaces or enclosed areas that could contain hazardous atmosphere under normal conditions or failure conditions, must be permanently stenciled, marked, or placarded to warn maintenance personnel of the possible presence of a potentially hazardous atmosphere.

M25.4 *Airworthiness limitations and procedures.*

(a) If FRM is used to comply with paragraph M25.1 of this appendix, Airworthiness Limitations must be identified for all maintenance or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraph M25.1 of this appendix.

(b) Maintenance procedures must be developed to identify any hazards to be considered during maintenance of the FRM. These procedures must be included in the instructions for continued airworthiness (ICA).

M25.5 *Reliability reporting.*

The effects of airplane component failures on FRM reliability must be assessed on an on-going basis. The applicant/holder must do the following:

(a) Demonstrate effective means to ensure collection of FRM reliability data. The means must provide data affecting FRM reliability, such as component failures.

(b) Unless alternative reporting procedures are approved by the FAA Oversight Office, as defined in part 26 of this subchapter, provide a report to the FAA every six months for the first five years after service introduction. After that period, continued reporting every six months may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRM meets, and will continue to meet, the exposure requirements of paragraph M25.1 of this appendix.

(c) Develop service instructions or revise the applicable airplane manual, according to a schedule approved by the FAA Oversight Office, as defined in part 26 of this subchapter, to correct any failures of the FRM that occur in service that could increase any fuel tank's Fleet Average Flammability Exposure to more than that required by paragraph M25.1 of this appendix.

■ 5. Part 25 is amended by adding a new APPENDIX N to read as follows:

APPENDIX N TO PART 25—FUEL TANK FLAMMABILITY EXPOSURE AND RELIABILITY ANALYSIS

N25.1 *General.*

(a) This appendix specifies the requirements for conducting fuel tank fleet average flammability exposure analyses required to meet § 25.981(b) and Appendix M of this part. For fuel tanks installed in aluminum wings, a qualitative assessment is sufficient if it substantiates that the tank is a conventional unheated wing tank.

(b) This appendix defines parameters affecting fuel tank flammability that must be used in performing the analysis. These include parameters that affect all airplanes within the fleet, such as a statistical distribution of ambient temperature, fuel flash point, flight lengths, and airplane descent rate. Demonstration of compliance also requires application of factors specific to the airplane model being evaluated. Factors that need to be included are maximum range, cruise mach number, typical altitude where the airplane begins initial cruise phase of flight, fuel temperature during both ground and flight times, and the performance of a flammability reduction means (FRM) if installed.

(c) The following definitions, input variables, and data tables must be used in the program to determine fleet average flammability exposure for a specific airplane model.

N25.2 *Definitions.*

(a) *Bulk Average Fuel Temperature* means the average fuel temperature within the fuel tank or different sections of the tank if the tank is subdivided by baffles or compartments.

(b) *Flammability Exposure Evaluation Time (FEET).* The time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded, and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Flight Length Distribution (Table 2), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

(c) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR Part 1, Definitions). A non-flammable ullage is one where the fuel-air vapor is too lean or too rich to burn or is inert as defined below. For the purposes of this appendix, a fuel tank that is not inert is considered flammable when the bulk average fuel temperature within the tank is within the flammable range for the fuel type being used. For any fuel tank that is subdivided into sections by baffles or compartments, the tank is considered flammable when the bulk average fuel temperature within any section of the tank, that is not inert, is within the flammable range for the fuel type being used.

(d) *Flash Point.* The flash point of a flammable fluid means the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' Table 1 of this appendix provides the flash point for the standard fuel to be used in the analysis.

(e) *Fleet average flammability exposure* is the percentage of the flammability exposure evaluation time (FEET) each fuel tank ullage is flammable for a fleet of an airplane type operating over the range of flight lengths in a world-wide range of environmental conditions and fuel properties as defined in this appendix.

(f) *Gaussian Distribution* is another name for the normal distribution, a symmetrical frequency distribution having a precise mathematical formula relating the mean and standard deviation of the samples. Gaussian distributions yield bell-shaped frequency curves having a preponderance of values around the mean with progressively fewer observations as the curve extends outward.

(g) *Hazardous atmosphere.* An atmosphere that may expose maintenance personnel, passengers or flight crew to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a confined space), injury, or acute illness.

(h) *Inert.* For the purpose of this appendix, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less from sea level up to 10,000 feet altitude, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet altitude, and extrapolated linearly above that altitude.

(i) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank so that the ullage becomes non-flammable.

(j) *Monte Carlo Analysis.* The analytical method that is specified in this appendix as the compliance means for assessing the fleet average flammability exposure time for a fuel tank.

(k) *Oxygen evolution* occurs when oxygen dissolved in the fuel is released into the ullage as the pressure and temperature in the fuel tank are reduced.

(l) *Standard deviation* is a statistical measure of the dispersion or variation in a distribution, equal to the square root of the arithmetic mean of the squares of the deviations from the arithmetic means.

(m) *Transport Effects.* For purposes of this appendix, transport effects are the change in fuel vapor concentration in a fuel tank caused by low fuel conditions and fuel condensation and vaporization.

(n) *Ullage.* The volume within the fuel tank not occupied by liquid fuel.

N25.3 *Fuel tank flammability exposure analysis.*

(a) A flammability exposure analysis must be conducted for the fuel tank under evaluation to determine fleet average flammability exposure for the airplane and fuel types under evaluation. For fuel tanks that are subdivided by baffles or compartments, an analysis must be performed either for each section of the tank, or for the section of the tank having the highest flammability exposure. Consideration of transport effects is not allowed in the analysis. The analysis must be done in accordance with the methods and procedures set forth in the Fuel Tank Flammability Assessment Method User's Manual, dated May 2008, document number DOT/FAA/AR–05/8 (incorporated by reference, see § 25.5). The parameters specified in sections N25.3(b) and (c) of this appendix must be used in the fuel tank flammability exposure ''Monte Carlo'' analysis.

(b) The following parameters are defined in the Monte Carlo analysis and provided in paragraph N25.4 of this appendix:

(1) Cruise Ambient Temperature, as defined in this appendix.

(2) Ground Ambient Temperature, as defined in this appendix.

(3) Fuel Flash Point, as defined in this appendix.

(4) Flight Length Distribution, as defined in Table 2 of this appendix.

(5) Airplane Climb and Descent Profiles, as defined in the Fuel Tank Flammability Assessment Method User's Manual, dated May 2008, document number DOT/FAA/AR–05/8 (incorporated by reference in § 25.5).

(c) Parameters that are specific to the particular airplane model under evaluation that must be provided as inputs to the Monte Carlo analysis are:

(1) Airplane cruise altitude.

(2) Fuel tank quantities. If fuel quantity affects fuel tank flammability, inputs to the Monte Carlo analysis must be provided that represent the actual fuel quantity within the fuel tank or compartment of the fuel tank throughout each of the flights being evaluated. Input values for this data must be obtained from ground and flight test data or the approved FAA fuel management procedures.

(3) Airplane cruise mach number.

(4) Airplane maximum range.

(5) Fuel tank thermal characteristics. If fuel temperature affects fuel tank flammability, inputs to the Monte Carlo analysis must be provided that represent the actual bulk average fuel temperature within the fuel tank at each point in time throughout each of the flights being evaluated. For fuel tanks that are subdivided by baffles or compartments, bulk average fuel temperature inputs must be provided for each section of the tank. Input values for these data must be obtained from ground and flight test data or a thermal model of the tank that has been validated by ground and flight test data.

(6) Maximum airplane operating temperature limit, as defined by any limitations in the airplane flight manual.

(7) Airplane Utilization. The applicant must provide data supporting the number of flights per day and the number of hours per flight for the specific airplane model under evaluation. If there is no existing airplane fleet data to support the airplane being evaluated, the applicant must provide substantiation that the number of flights per day and the number of hours per flight for that airplane model is consistent with the existing fleet data they propose to use.

(d) *Fuel Tank FRM Model.* If FRM is used, an FAA approved Monte Carlo program must be used to show compliance with the flammability requirements of § 25.981 and Appendix M of this part. The program must determine the time periods during each flight phase when the fuel tank or compartment with the FRM would be flammable. The following factors must be considered in establishing these time periods:

(1) Any time periods throughout the flammability exposure evaluation time and under the full range of expected operating conditions, when the FRM is operating properly but fails to maintain a non-flammable fuel tank because of the effects of the fuel tank vent system or other causes,

(2) If dispatch with the system inoperative under the Master Minimum Equipment List (MMEL) is requested, the time period assumed in the reliability analysis (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the Administrator),

(3) Frequency and duration of time periods of FRM inoperability, substantiated by test or analysis acceptable to the FAA, caused by latent or known failures, including airplane system shut-downs and failures that could cause the FRM to shut down or become inoperative.

(4) Effects of failures of the FRM that could increase the flammability exposure of the fuel tank.

(5) If an FRM is used that is affected by oxygen concentrations in the fuel tank, the time periods when oxygen evolution from the fuel results in the fuel tank or compartment exceeding the inert level. The applicant must include any times when oxygen evolution from the fuel in the tank or compartment under evaluation would result in a flammable fuel tank. The oxygen evolution rate that must be used is defined in the Fuel Tank Flammability Assessment Method User's Manual, dated May 2008, document number DOT/FAA/AR–05/8 (incorporated by reference in § 25.5).

(6) If an inerting system FRM is used, the effects of any air that may enter the fuel tank following the last flight of the day due to changes in ambient temperature, as defined in Table 4, during a 12-hour overnight period.

(e) The applicant must submit to the FAA Oversight Office for approval the fuel tank flammability analysis, including the airplane-specific parameters identified under paragraph N25.3(c) of this appendix and any deviations from the parameters identified in paragraph N25.3(b) of this appendix that affect flammability exposure, substantiating data, and any airworthiness limitations and other conditions assumed in the analysis.

N25.4 *Variables and data tables.*

The following data must be used when conducting a flammability exposure analysis to determine the fleet average flammability exposure. Variables used to calculate fleet flammability exposure must include atmospheric ambient temperatures, flight length, flammability exposure evaluation time, fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage.

(a) Atmospheric Ambient Temperatures and Fuel Properties.

(1) In order to predict flammability exposure during a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise ambient temperatures and the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ±1-standard deviation value.

(2) Ambient Temperature: Under the program, the ground and cruise ambient temperatures are linked by a set of assumptions on the atmosphere. The temperature varies with altitude following the International Standard Atmosphere (ISA) rate of change from the ground ambient temperature until the cruise temperature for the flight is reached. Above this altitude, the ambient temperature is fixed at the cruise ambient temperature. This results in a variation in the upper atmospheric temperature. For cold days, an inversion is applied up to 10,000 feet, and then the ISA rate of change is used.

(3) Fuel properties:

(i) For Jet A fuel, the variation of flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ±1-standard deviation, as shown in Table 1 of this appendix.

(ii) The flammability envelope of the fuel that must be used for the flammability exposure analysis is a function of the flash point of the fuel selected by the Monte Carlo for a given flight. The flammability envelope for the fuel is defined by the upper flammability limit (UFL) and lower flammability limit (LFL) as follows:

(A) LFL at sea level = flash point temperature of the fuel at sea level minus 10 ° F. LFL decreases from sea level value with increasing altitude at a rate of 1 °F per 808 feet.

(B) UFL at sea level = flash point temperature of the fuel at sea level plus 63.5 ° F. UFL decreases from the sea level value with increasing altitude at a rate of 1 °F per 512 feet.

(4) For each flight analyzed, a separate random number must be generated for each of the three parameters (ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1 of this appendix.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT TEMPERATURE, CRUISE AMBIENT TEMPERATURE, AND FUEL FLASH POINT

Parameter	Temperature in deg F		
	Ground ambient temperature	Cruise ambient temperature	Fuel flash point (FP)
Mean Temp	59.95	−70	120
Neg 1 std dev	20.14	8	8
Pos 1 std dev	17.28	8	8

(b) The Flight Length Distribution defined in Table 2 must be used in the Monte Carlo analysis.

TABLE 2.—FLIGHT LENGTH DISTRIBUTION

Flight length (NM)		Airplane maximum range—nautical miles (NM)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
		Distribution of flight lengths (percentage of total)									
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2

TABLE 2.—FLIGHT LENGTH DISTRIBUTION—Continued

Flight length (NM)		Airplane maximum range—nautical miles (NM)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

(c) Overnight Temperature Drop. For airplanes on which FRM is installed, the overnight temperature drop for this appendix is defined using:

(1) A temperature at the beginning of the overnight period that equals the landing temperature of the previous flight that is a random value based on a Gaussian distribution; and

(2) An overnight temperature drop that is a random value based on a Gaussian distribution.

(3) For any flight that will end with an overnight ground period (one flight per day out of an average number of flights per day, depending on utilization of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 3.—LANDING OUTSIDE AIR TEMPERATURE

Parameter	Landing outside air temperature °F
Mean Temperature	58.68
negative 1 std dev	20.55
positive 1 std dev	13.21

(4) The outside ambient air temperature (OAT) overnight temperature drop is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—OUTSIDE AIR TEMPERATURE (OAT) DROP

Parameter	OAT drop temperature °F
Mean Temp	12.0
1 std dev	6.0

(d) Number of Simulated Flights Required in Analysis. In order for the Monte Carlo analysis to be valid for showing compliance with the fleet average and warm day flammability exposure requirements, the applicant must run the analysis for a minimum number of flights to ensure that the fleet average and warm day flammability exposure for the fuel tank under evaluation meets the applicable flammability limits defined in Table 5 of this appendix.

TABLE 5.—FLAMMABILITY EXPOSURE LIMIT

Minimum number of flights in Monte Carlo analysis	Maximum acceptable Monte Carlo average fuel tank flammability exposure (percent) to meet 3 percent requirements	Maximum acceptable Monte Carlo average fuel tank flammability exposure (percent) to meet 7 percent part 26 requirements
10,000	2.91	6.79
100,000	2.98	6.96
1,000,000	3.00	7.00

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 6. The authority citation for part 26 continues to read as follows:

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

■ 7. Revise § 26.5 to read as follows:

§ 26.5 Applicability Table.

Table 1 of this section provides an overview of the applicability of this part. It provides guidance in identifying what sections apply to various types of entities. The specific applicability of each subpart and section is specified in the regulatory text.

TABLE 1.—APPLICABILITY OF PART 26 RULES

Effective date of rule	Applicable sections		
	Subpart B EAPAS/ FTS	Subpart D fuel tank flammability	Subpart E damage tolerance data
	December 10, 2007	September 19, 2008	January 11, 2008
Existing [1] TC Holders	26.11	26.33	26.43, 26.45, 26.49
Pending [1] TC Applicants	26.11	26.37	26.43, 26.45
Existing [1] STC Holders	N/A	26.35	26.47, 26.49
Pending [1] STC/ATC Applicants	26.11	26.35	26.45, 26.47, 26.49
Future [2] STC/ATC Applicants	26.11	26.35	26.45, 26.47, 26.49
Manufacturers	N/A	26.39	N/A

[1] As of the effective date of the identified rule.

[2] Application made after the effective date of the identified rule.

■ 8. Amend part 26 by adding a new subpart D to read as follows:

Subpart D—FUEL TANK FLAMMABILITY

General

Sec.
26.31 Definitions.
26.33 Holders of type certificates: Fuel tank flammability.
26.35 Changes to type certificates affecting fuel tank flammability.
26.37 Pending type certification projects: Fuel tank flammability.
26.39 Newly produced airplanes: Fuel tank flammability.

Subpart D—Fuel Tank Flammability

General

§ 26.31 Definitions.

For purposes of this subpart—

(a) *Fleet Average Flammability Exposure* has the meaning defined in Appendix N of part 25 of this chapter.

(b) *Normally Emptied* means a fuel tank other than a Main Fuel Tank. Main Fuel Tank is defined in 14 CFR 25.981(b).

§ 26.33 Holders of type certificates: Fuel tank flammability.

(a) *Applicability.* This section applies to U.S. type certificated transport category, turbine-powered airplanes, other than those designed solely for all-cargo operations, for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval on or after January 1, 1992, that, as a result of original type certification or later increase in capacity have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *Flammability Exposure Analysis.* (1) *General.* Within 150 days after September 19, 2008, holders of type certificates must submit for approval to the FAA Oversight Office a flammability exposure analysis of all fuel tanks defined in the type design, as well as all design variations approved under the type certificate that affect flammability exposure. This analysis must be conducted in accordance with Appendix N of part 25 of this chapter.

(2) *Exception.* This paragraph (b) does not apply to—

(i) Fuel tanks for which the type certificate holder has notified the FAA under paragraph (g) of this section that it will provide design changes and service instructions for Flammability Reduction Means or an Ignition Mitigation Means (IMM) meeting the requirements of paragraph (c) of this section.

(ii) Fuel tanks substantiated to be conventional unheated aluminum wing tanks.

(c) *Design Changes.* For fuel tanks with a Fleet Average Flammability Exposure exceeding 7 percent, one of the following design changes must be made.

(1) *Flammability Reduction Means (FRM).* A means must be provided to reduce the fuel tank flammability.

(i) Fuel tanks that are designed to be Normally Emptied must meet the flammability exposure criteria of Appendix M of part 25 of this chapter if any portion of the tank is located within the fuselage contour.

(ii) For all other fuel tanks, the FRM must meet all of the requirements of Appendix M of part 25 of this chapter, except, instead of complying with paragraph M25.1 of this appendix, the Fleet Average Flammability Exposure may not exceed 7 percent.

(2) *Ignition Mitigation Means (IMM).* A means must be provided to mitigate the effects of an ignition of fuel vapors within the fuel tank such that no damage caused by an ignition will prevent continued safe flight and landing.

(d) *Service Instructions.* No later than September 20, 2010, holders of type certificates required by paragraph (c) of this section to make design changes must meet the requirements specified in either paragraph (d)(1) or (d)(2) of this section. The required service instructions must identify each airplane subject to the applicability provisions of paragraph (a) of this section.

(1) *FRM.* The type certificate holder must submit for approval by the FAA Oversight Office design changes and service instructions for installation of fuel tank flammability reduction means (FRM) meeting the criteria of paragraph (c) of this section.

(2) *IMM.* The type certificate holder must submit for approval by the FAA Oversight Office design changes and service instructions for installation of fuel tank IMM that comply with 14 CFR 25.981(c) in effect on September 19, 2008.

(e) *Instructions for Continued Airworthiness (ICA).* No later than September 20, 2010, holders of type certificates required by paragraph (c) of this section to make design changes must submit for approval by the FAA Oversight Office, critical design configuration control limitations (CDCCL), inspections, or other procedures to prevent increasing the flammability exposure of any tanks equipped with FRM above that permitted under paragraph (c)(1) of this section and to prevent degradation of the performance of any IMM provided under paragraph (c)(2) of this section. These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations Section (ALS) of the ICA required by 14 CFR 25.1529 or paragraph (f) of this section. Unless shown to be impracticable, visible means to identify critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration limitations. These visible means must also be identified as a CDCCL.

(f) *Airworthiness Limitations.* Unless previously accomplished, no later than September 20, 2010, holders of type certificates affected by this section must establish an ALS of the maintenance manual or ICA for each airplane configuration evaluated under paragraph (b)(1) of this section and submit it to the FAA Oversight Office for approval. The ALS must include a section that contains the CDCCL, inspections, or other procedures developed under paragraph (e) of this section.

(g) *Compliance Plan for Flammability Exposure Analysis.* Within 90 days after September 19, 2008, each holder of a type certificate required to comply with paragraph (b) of this section must submit to the FAA Oversight Office a compliance plan consisting of the following:

(1) A proposed project schedule for submitting the required analysis, or a determination that compliance with paragraph (b) of this section is not required because design changes and service instructions for FRM or IMM will be developed and made available as required by this section.

(2) A proposed means of compliance with paragraph (b) of this section, if applicable.

(h) *Compliance Plan for Design Changes and Service Instructions.* Within 210 days after September 19, 2008, each holder of a type certificate required to comply with paragraph (d) of this section must submit to the FAA Oversight Office a compliance plan consisting of the following:

(1) A proposed project schedule, identifying all major milestones, for meeting the compliance dates specified in paragraphs (d), (e) and (f) of this section.

(2) A proposed means of compliance with paragraphs (d), (e) and (f) of this section.

(3) A proposal for submitting a draft of all compliance items required by paragraphs (d), (e) and (f) of this section for review by the FAA Oversight Office

not less than 60 days before the compliance times specified in those paragraphs.

(4) A proposal for how the approved service information and any necessary modification parts will be made available to affected persons.

(i) Each affected type certificate holder must implement the compliance plans, or later revisions, as approved under paragraph (g) and (h) of this section.

§ 26.35 Changes to type certificates affecting fuel tank flammability.

(a) *Applicability*. This section applies to holders and applicants for approvals of the following design changes to any airplane subject to 14 CFR 26.33(a):

(1) Any fuel tank designed to be Normally Emptied if the fuel tank installation was approved pursuant to a supplemental type certificate or a field approval before September 19, 2008;

(2) Any fuel tank designed to be Normally Emptied if an application for a supplemental type certificate or an amendment to a type certificate was made before September 19, 2008 and if the approval was not issued before September 19, 2008; and

(3) If an application for a supplemental type certificate or an amendment to a type certificate is made on or September 19, 2008, any of the following design changes:

(i) Installation of a fuel tank designed to be Normally Emptied,

(ii) Changes to existing fuel tank capacity, or

(iii) Changes that may increase the flammability exposure of an existing fuel tank for which FRM or IMM is required by § 26.33(c).

(b) *Flammability Exposure Analysis*—(1) *General*. By the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, each person subject to this section must submit for approval a flammability exposure analysis of the auxiliary fuel tanks or other affected fuel tanks, as defined in the type design, to the FAA Oversight Office. This analysis must be conducted in accordance with Appendix N of part 25 of this chapter.

(i) Holders of supplemental type certificates and field approvals: Within 12 months of September 19, 2008,

(ii) Applicants for supplemental type certificates and for amendments to type certificates: Within 12 months after September 19, 2008, or before the certificate is issued, whichever occurs later.

(2) *Exception*. This paragraph does not apply to—

(i) Fuel tanks for which the type certificate holder, supplemental type certificate holder, or field approval holder has notified the FAA under paragraph (f) of this section that it will provide design changes and service instructions for an IMM meeting the requirements of § 25.981(c) in effect September 19, 2008; and

(ii) Fuel tanks substantiated to be conventional unheated aluminum wing tanks.

(c) *Impact Assessment*. By the times specified in paragraphs (c)(1) and (c)(2) of this section, each person subject to paragraph (a)(1) of this section holding an approval for installation of a Normally Emptied fuel tank on an airplane model listed in Table 1 of this section, and each person subject to paragraph (a)(3)(iii) of this section, must submit for approval to the FAA Oversight Office an assessment of the fuel tank system, as modified by their design change. The assessment must identify any features of the design change that compromise any critical design configuration control limitation (CDCCL) applicable to any airplane on which the design change is eligible for installation.

(1) Holders of supplemental type certificates and field approvals: Before March 21, 2011.

(2) Applicants for supplemental type certificates and for amendments to type certificates: Before March 21, 2011 or before the certificate is issued, whichever occurs later.

TABLE 1

Model—Boeing
747 Series
737 Series
777 Series
767 Series
757 Series
Model—Airbus
A318, A319, A320, A321 Series
A300, A310 Series
A330, A340 Series

(d) *Design Changes and Service Instructions*. By the times specified in paragraph (e) of this section, each person subject to this section must meet the requirements of paragraphs (d)(1) or (d)(2) of this section, as applicable.

(1) For holders and applicants subject to paragraph (a)(1) or (a)(3)(iii) of this section, if the assessment required by paragraph (c) of this section identifies any features of the design change that compromise any CDCCL applicable to any airplane on which the design change is eligible for installation, the holder or applicant must submit for approval by the FAA Oversight Office design changes and service instructions for Flammability Impact Mitigation Means (FIMM) that would bring the design change into compliance with the CDCCL. Any fuel tank modified as required by this paragraph must also be evaluated as required by paragraph (b) of this section.

(2) Applicants subject to paragraph (a)(2), or (a)(3)(i) of this section must comply with the requirements of 14 CFR 25.981, in effect on September 19, 2008.

(3) Applicants subject to paragraph (a)(3)(ii) of this section must comply with the requirements of 14 CFR 26.33.

(e) *Compliance Times for Design Changes and Service Instructions*. The following persons subject to this section must comply with the requirements of paragraph (d) of this section at the specified times.

(1) Holders of supplemental type certificates and field approvals: Before September 19, 2012.

(2) Applicants for supplemental type certificates and for amendments to type certificates: Before September 19, 2012, or before the certificate is issued, whichever occurs later.

(f) *Compliance Planning*. By the applicable date specified in Table 2 of this section, each person subject to paragraph (a)(1) of this section must submit for approval by the FAA Oversight Office compliance plans for the flammability exposure analysis required by paragraph (b) of this section, the impact assessment required by paragraph (c) of this section, and the design changes and service instructions required by paragraph (d) of this section. Each person's compliance plans must include the following:

(1) A proposed project schedule for submitting the required analysis or impact assessment.

(2) A proposed means of compliance with paragraph (d) of this section.

(3) For the requirements of paragraph (d) of this section, a proposal for submitting a draft of all design changes, if any are required, and Airworthiness Limitations (including CDCCLs) for review by the FAA Oversight Office not less than 60 days before the compliance time specified in paragraph (e) of this section.

(4) For the requirements of paragraph (d) of this section, a proposal for how the approved service information and any necessary modification parts will be made available to affected persons.

TABLE 2.—COMPLIANCE PLANNING DATES

	Flammability exposure analysis plan	Impact assessment plan	Design changes and service instructions plan
STC and Field Approval Holders ...	December 18, 2008	November 19, 2010	May 19, 2011.

(g) Each person subject to this section must implement the compliance plans, or later revisions, as approved under paragraph (f) of this section.

§ 26.37 Pending type certification projects: Fuel tank flammability.

(a) *Applicability*. This section applies to any new type certificate for a transport category airplane, if the application was made before September 19, 2008, and if the certificate was not issued September 19, 2008. This section applies only if the airplane would have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) If the application was made on or after June 6, 2001, the requirements of 14 CFR 25.981 in effect on September 19, 2008, apply.

§ 26.39 Newly produced airplanes: Fuel tank flammability.

(a) *Applicability:* This section applies to Boeing model airplanes specified in Table 1 of this section, including passenger and cargo versions of each model, when application is made for original certificates of airworthiness or export airworthiness approvals after September 20, 2010.

TABLE 1

Model—Boeing
747 Series
737 Series
777 Series
767 Series

(b) Any fuel tank meeting all of the criteria stated in paragraphs (b)(1), (b)(2) and (b)(3) of this section must have flammability reduction means (FRM) or ignition mitigation means (IMM) that meet the requirements of 14 CFR 25.981 in effect on September 19, 2008.

(1) The fuel tank is Normally Emptied.

(2) Any portion of the fuel tank is located within the fuselage contour.

(3) The fuel tank exceeds a Fleet Average Flammability Exposure of 7 percent.

(c) All other fuel tanks that exceed an Fleet Average Flammability Exposure of 7 percent must have an IMM that meets 14 CFR 25.981(d) in effect on September 19, 2008, or an FRM that meets all of the requirements of Appendix M to this part, except instead of complying with paragraph M25.1 of that appendix, the Fleet Average Flammability Exposure may not exceed 7 percent.

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

■ 9. 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, 44012, 46105, 46301.

■ 10. Amend part 121 by adding a new § 121.1117, to read as follows:

§ 121.1117 Flammability reduction means.

(a) *Applicability*. Except as provided in paragraph (o) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *New Production Airplanes*. Except in accordance with § 121.628, no certificate holder may operate an airplane identified in Table 1 of this section (including all-cargo airplanes) for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval after September 20, 2010 unless an Ignition Mitigation Means (IMM) or Flammability Reduction Means (FRM) meeting the requirements of § 26.33 of this chapter is operational.

TABLE 1

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A330, A340 Series
777 Series	
767 Series	

(c) *Auxiliary Fuel Tanks*. After the applicable date stated in paragraph (e) of this section, no certificate holder may operate any airplane subject to § 26.33 of this chapter that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met:

(1) The certificate holder complies with 14 CFR 26.35 by the applicable date stated in that section.

(2) The certificate holder installs Flammability Impact Mitigation Means (FIMM), if applicable, that is approved by the FAA Oversight Office.

(3) Except in accordance with § 121.628, the FIMM, if applicable, is operational.

(d) *Retrofit*. Except as provided in paragraphs (j), (k), and (l) of this section, after the dates specified in paragraph (e) of this section, no certificate holder may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM or FIMM, if required by §§ 26.33, 26.35, or 26.37 of this chapter, that are approved by the FAA Oversight Office, are installed within the compliance times specified in paragraph (e) of this section.

(2) Except in accordance with § 121.628, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times*. Except as provided in paragraphs (k) and (l) of this section, the installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1), (e)(2), or (e)(3) of this section.

(1) Fifty percent of each certificate holder's fleet identified in paragraph (d)(1) of this section must be modified no later than September 19, 2014.

(2) One hundred percent of each certificate holder's fleet identified in paragraph (d)(1) of this section must be modified no later than September 19, 2017.

(3) For those certificate holders that have only one airplane of a model identified in Table 1 of this section, the airplane must be modified no later than September 19, 2017.

(f) *Compliance After Installation*. Except in accordance with § 121.628, no certificate holder may—

(1) Operate an airplane on which IMM or FRM has been installed before the dates specified in paragraph (e) of this section unless the IMM or FRM is operational, or

(2) Deactivate or remove an IMM or FRM once installed unless it is replaced

by a means that complies with paragraph (d) of this section.

(g) *Maintenance Program Revisions.* No certificate holder may operate an airplane for which airworthiness limitations have been approved by the FAA Oversight Office in accordance with §§ 26.33, 26.35, or 26.37 of this chapter after the airplane is modified in accordance with paragraph (d) of this section unless the maintenance program for that airplane is revised to include those applicable airworthiness limitations.

(h) After the maintenance program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.981, 26.33, or 26.37 of this chapter, the certificate holder must revise the maintenance program for the airplane to include those airworthiness limitations.

(i) The maintenance program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's Principal Maintenance Inspector responsible for review and approval prior to incorporation.

(j) The requirements of paragraph (d) of this section do not apply to airplanes operated in all-cargo service, but those airplanes are subject to paragraph (f) of this section.

(k) The compliance dates specified in paragraph (e) of this section may be extended by one year, provided that—

(1) No later than December 18, 2008, the certificate holder notifies its assigned Flight Standards Office or Principal Inspector that it intends to comply with this paragraph;

(2) No later than March 18, 2009, the certificate holder applies for an amendment to its operations specification in accordance with § 119.51 of this chapter and revises the manual required by § 121.133 to include a requirement for the airplane models specified in Table 2 of this section to use ground air conditioning systems for actual gate times of more than 30 minutes, when available at the gate and operational, whenever the ambient temperature exceeds 60 degrees Fahrenheit; and

(3) Thereafter, the certificate holder uses ground air conditioning systems as described in paragraph (k)(2) of this section on each airplane subject to the extension.

TABLE 2

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A300, A310 Series
777 Series	A330, A340 Series
767 Series	
757 Series	

(l) For any certificate holder for which the operating certificate is issued after September 19, 2008, the compliance date specified in paragraph (e) of this section may be extended by one year, provided that the certificate holder meets the requirements of paragraph (k)(2) of this section when its initial operations specifications are issued and, thereafter, uses ground air conditioning systems as described in paragraph (k)(2) of this section on each airplane subject to the extension.

(m) After the date by which any person is required by this section to modify 100 percent of the affected fleet, no certificate holder may operate in passenger service any airplane model specified in Table 2 of this section unless the airplane has been modified to comply with § 26.33(c) of this chapter.

(n) No certificate holder may operate any airplane on which an auxiliary fuel tank is installed after September 19, 2017 unless the FAA has certified the tank as compliant with § 25.981 of this chapter, in effect on September 19, 2008.

(o) *Exclusions.* The requirements of this section do not apply to the following airplane models:

(1) Convair CV–240, 340, 440, including turbine powered conversions.

(2) Lockheed L–188 Electra.

(3) Vickers Armstrong Viscount.

(4) Douglas DC–3, including turbine powered conversions.

(5) Bombardier CL–44.

(6) Mitsubishi YS–11.

(7) BAC 1–11.

(8) Concorde.

(9) deHavilland D.H. 106 Comet 4C.

(10) VFW—Vereinigte Flugtechnische VFW–614.

(11) Illyushin Aviation IL 96T.

(12) Vickers Armstrong Viscount.

(13) Bristol Aircraft Britannia 305.

(14) Handley Page Handley Page Herald Type 300.

(15) Avions Marcel Dassault—Breguet Aviation Mercure 100C.

(16) Airbus Caravelle.

(17) Fokker F–27/Fairchild Hiller FH–227.

(18) Lockheed L–300.

PART 125—CERTIFICATION AND OPERATIONS; AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 11. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 12. Amend part 125 by adding a new § 125.509 to read as follows:

§ 125.509 Flammability reduction means.

(a) *Applicability.* Except as provided in paragraph (m) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *New Production Airplanes.* Except in accordance with § 125.201, no person may operate an airplane identified in Table 1 of this section (including all-cargo airplanes) for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval after September 20, 2010 unless an Ignition Mitigation Means (IMM) or Flammability Reduction Means (FRM) meeting the requirements of § 26.33 of this chapter is operational.

TABLE 1

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A330, A340 Series
777 Series	
767 Series	

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraph (e) of this section, no person may operate any airplane subject to § 26.33 of this chapter that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met:

(1) The person complies with 14 CFR 26.35 by the applicable date stated in that section.

(2) The person installs Flammability Impact Mitigation Means (FIMM), if applicable, that is approved by the FAA Oversight Office.

(3) Except in accordance with § 125.201, the FIMM, if applicable, are operational.

(d) *Retrofit.* Except as provided in paragraph (j) of this section, after the dates specified in paragraph (e) of this section, no person may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) Ignition Mitigation Means (IMM), Flammability Reduction Means (FRM), or FIMM, if required by §§ 26.33, 26.35, or 26.37 of this chapter, that are approved by the FAA Oversight Office, are installed within the compliance times specified in paragraph (e) of this section.

(2) Except in accordance with § 125.201 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times.* The installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1), (e)(2) or (e)(3) of this section.

(1) Fifty percent of each person's fleet of airplanes subject to paragraph (d)(1) of this section must be modified no later than September 19, 2014.

(2) One hundred percent of each person's fleet of airplanes subject to paragraph (d)(1) of this section must be modified no later than September 19, 2017.

(3) For those persons that have only one airplane of a model identified in Table 1 of this section, the airplane must be modified no later than September 19, 2017.

(f) *Compliance after Installation.* Except in accordance with § 125.201, no person may—

(1) Operate an airplane on which IMM or FRM has been installed before the dates specified in paragraph (e) of this section unless the IMM or FRM is operational, or

(2) Deactivate or remove an IMM or FRM once installed unless it is replaced by a means that complies with paragraph (d) of this section.

(g) *Inspection Program Revisions.* No person may operate an airplane for which airworthiness limitations have been approved by the FAA Oversight Office in accordance with §§ 26.33, 26.35, or 26.37 of this chapter after the airplane is modified in accordance with paragraph (d) of this section unless the inspection program for that airplane is revised to include those applicable airworthiness limitations.

(h) After the inspection program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.981, 26.33, 26.35, or 26.37 of this chapter, the person must revise the inspection program for the airplane to include those airworthiness limitations.

(i) The inspection program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's assigned Flight Standards Office responsible for review and approval prior to incorporation.

(j) The requirements of paragraph (d) of this section do not apply to airplanes operated in all-cargo service, but those airplanes are subject to paragraph (f) of this section.

(k) After the date by which any person is required by this section to modify 100 percent of the affected fleet, no person may operate in passenger service any airplane model specified in Table 2 of this section unless the airplane has been modified to comply with § 26.33(c) of this chapter.

(l) No person may operate any airplane on which an auxiliary fuel tank is installed after September 19, 2017 unless the FAA has certified the tank as compliant with § 25.981 of this chapter, in effect on September 19, 2008.

(m) *Exclusions.* The requirements of this section do not apply to the following airplane models:

(1) Convair CV–240, 340, 440, including turbine powered conversions.

(2) Lockheed L–188 Electra.

(3) Vickers Armstrong Viscount.

(4) Douglas DC–3, including turbine powered conversions.

(5) Bombardier CL–44.

(6) Mitsubishi YS–11.

(7) BAC 1–11.

(8) Concorde.

(9) deHavilland D.H. 106 Comet 4C.

(10) VFW—Vereinigte Flugtechnische VFW–614.

(11) Illyushin Aviation IL 96T.

(12) Vickers Armstrong Viscount.

(13) Bristol Aircraft Britannia 305.

(14) Handley Page Handley Page Herald Type 300.

(15) Avions Marcel Dassault—Breguet Aviation Mercure 100C.

(16) Airbus Caravelle.

(17) Fokker F–27/Fairchild Hiller FH–227.

(18) Lockheed L–300.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 13. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 49113, 440119, 44101, 44701–44702, 447–5, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 44105, Pub. L. 107–71 sec. 104.

■ 14. Amend part 129 by adding a new § 129.117 to read as follows:

§ 129.117 Flammability reduction means.

(a) *Applicability.* Except as provided in paragraph (o) of this section, this section applies to U.S.-registered transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that as a result of original type certification or later increase in capacity have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *New Production Airplanes.* Except in accordance with § 129.14, no foreign air carrier or foreign person may operate an airplane identified in Table 1 of this section (including all-cargo airplanes) for which application is made for original certificate of airworthiness or export airworthiness approval after September 20, 2010 unless an Ignition Mitigation Means (IMM) or Flammability Reduction Means (FRM) meeting the requirements of § 26.33 of this chapter is operational.

TABLE 1

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A330, A340 Series
777 Series	
767 Series	

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraph (e) of this section, no foreign air carrier or foreign person may operate any airplane subject § 26.33 of this chapter that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met:

(1) The foreign air carrier or foreign person complies with 14 CFR 26.35 by the applicable date stated in that section.

(2) The foreign air carrier or foreign person installs Flammability Impact Mitigation Means (FIMM), if applicable, that are approved by the FAA Oversight Office.

(3) Except in accordance with § 129.14, the FIMM, if applicable, are operational.

(d) *Retrofit.* After the dates specified in paragraphs (j), (k), and (l) of this section, after the dates specified in paragraph (e) of this section, no foreign air carrier or foreign person may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM or FIMM, if required by §§ 26.33, 26.35, or 26.37 of this chapter,

that are approved by the FAA Oversight Office, are installed within the compliance times specified in paragraph (e) of this section.

(2) Except in accordance with § 129.14, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times.* Except as provided in paragraphs (k) and (l) of this section, the installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1) or (e)(2) of this section.

(1) Fifty percent of each foreign air carrier or foreign person's fleet identified in paragraph (d)(1) of this section must be modified no later than September 19, 2014.

(2) One hundred percent of each foreign air carrier or foreign person's fleet of airplanes subject to paragraph (d)(1) or this section must be modified no later than September 19, 2017.

(3) For those foreign air carriers or foreign persons that have only one airplane for a model identified in Table 1, the airplane must be modified no later than September 19, 2017.

(f) *Compliance after Installation.* Except in accordance with § 129.14, no person may—

(1) Operate an airplane on which IMM or FRM has been installed before the dates specified in paragraph (e) of this section unless the IMM or FRM is operational.

(2) Deactivate or remove an IMM or FRM once installed unless it is replaced by a means that complies with paragraph (d) of this section.

(g) *Maintenance Program Revisions.* No foreign air carrier or foreign person may operate an airplane for which airworthiness limitations have been approved by the FAA Oversight Office in accordance with §§ 26.33, 26.35, or 26.37 of this chapter after the airplane is modified in accordance with paragraph (d) of this section unless the maintenance program for that airplane is revised to include those applicable airworthiness limitations.

(h) After the maintenance program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.981, 26.33, 26.35, or 26.37 of this chapter, the foreign person or foreign air carrier must revise the maintenance program for the airplane to include those airworthiness limitations.

(i) The maintenance program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's assigned Flight Standards Office or Principal Inspector for review and approval prior to incorporation.

(j) The requirements of paragraph (d) of this section do not apply to airplanes operated in all-cargo service, but those airplanes are subject to paragraph (f) of this section.

(k) The compliance dates specified in paragraph (e) of this section may be extended by one year, provided that—

(1) No later than December 18, 2008, the foreign air carrier or foreign person notifies its assigned Flight Standards Office or Principal Inspector that it intends to comply with this paragraph;

(2) No later than March 18, 2009, the foreign air carrier or foreign person applies for an amendment to its operations specifications in accordance with § 129.11 to include a requirement for the airplane models specified in Table 2 of this section to use ground air conditioning systems for actual gate times of more than 30 minutes, when available at the gate and operational, whenever the ambient temperature exceeds 60 degrees Fahrenheit; and

(3) Thereafter, the certificate holder uses ground air conditioning systems as described in paragraph (k)(2) of this section on each airplane subject to the extension.

TABLE 2

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A300, A310 Series
777 Series	A330, A340 Series
767 Series	
757 Series	

(l) For any foreign air carrier or foreign person for which the operating certificate is issued after September 19, 2008, the compliance date specified in paragraph (e) of this section may be extended by one year, provided that the foreign air carrier or foreign person meets the requirements of paragraph (k)(2) of this section when its initial operations specifications are issued and, thereafter, uses ground air conditioning systems as described in paragraph (k)(2) of this section on each airplane subject to the extension.

(m) After the date by which any person is required by this section to modify 100 percent of the affected fleet, no person may operate in passenger service any airplane model specified in Table 2 of this section unless the airplane has been modified to comply with § 26.33(c) of this chapter.

TABLE 3

Model—Boeing	Model—Airbus
747 Series	A318, A319, A320, A321 Series
737 Series	A300, A310 Series
777 Series	A330, A340 Series
767 Series	
757 Series	
707/720 Series	

(n) No foreign air carrier or foreign person may operate any airplane on which an auxiliary fuel tank is installed after September 19, 2017 unless the FAA has certified the tank as compliant with § 25.981 of this chapter, in effect on September 19, 2008.

(o) *Exclusions.* The requirements of this section do not apply to the following airplane models:

(1) Convair CV–240, 340, 440, including turbine powered conversions.

(2) Lockheed L–188 Electra.

(3) Vickers Armstrong Viscount.

(4) Douglas DC–3, including turbine powered conversions.

(5) Bombardier CL–44.

(6) Mitsubishi YS–11.

(7) BAC 1–11.

(8) Concorde.

(9) deHavilland D.H. 106 Comet 4C.

(10) VFW—Vereinigte Flugtechnische VFW–614.

(11) Illyushin Aviation IL 96T.

(12) Vickers Armstrong Viscount.

(13) Bristol Aircraft Britannia 305.

(14) Handley Page Handley Page Herald Type 300.

(15) Avions Marcel Dassault—Breguet Aviation Mercure 100C.

(16) Airbus Caravelle.

(17) Fokker F–27/Fairchild Hiller FH–227.

(18) Lockheed L–300.

Issued in Washington, DC, on July 9, 2008.

Robert A. Sturgell,

Acting Administrator.

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Federal Register

Monday,
July 21, 2008

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.325D, 84.325K, and 84.325T.

Note: This notice invites applications for three separate competitions. For key dates, contact person information, and funding information regarding each of the three competitions, see the chart in the *Award Information* section of this notice.

Dates:

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA number
Preparation of Leadership Personnel.	84.325D
Combined Personnel Preparation.	84.325K
Special Education Preservice Program Improvement Grants.	84.325T

Absolute Priorities: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applications from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

The priorities are:

Absolute Priority 1—Preparation of Leadership Personnel (84.325D).

Background: Training of special educators and related services personnel at the highest levels, including both the doctoral and post-doctoral levels, is critical to ensure the continued development and availability of quality services for children with disabilities. Over the last several decades, research has consistently suggested that there is a persistent need for special education and related services personnel who have been trained at the doctoral and post-doctoral levels (Smith, Pion, & Tyler, 2004; Smith, Pion, Tyler, Sindelar, & Rosenberg, 2001; Wasburn-Moses & Therrien, in press). Accordingly, the Department seeks to support programs that provide doctoral, post-doctoral, and advanced graduate level training that prepares professionals to work in special education as researchers, teacher educators, administrators, and direct service providers.

Priority: The Preparation of Leadership Personnel priority supports projects that train personnel at the preservice doctoral or post-doctoral level in early intervention, special education, or related services, and at the advanced graduate level (masters and specialists) in special education administration/supervision. In order to be eligible under this priority, programs must provide training and support for scholars to complete their training within the project period of the grant. Therefore, only the following types of programs of study will meet the requirements of this priority:

1. A major in special education, related services, or early intervention at the doctoral or post-doctoral level; and

2. Training at the advanced graduate level (masters and specialists programs) in special education administration/supervision.

Note: Training that leads to a Doctor of Audiology (DAud) degree is not included as part of this priority because training programs that lead to a DAud degree are eligible to apply for funding under the Combined Personnel Preparation priority (CFDA 84.325K) announced elsewhere in this notice.

To be considered for funding under the Preparation of Leadership Personnel absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The application, programmatic, and administrative requirements are as follows:

(a) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how—

(1) The program prepares personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by—

(i) Identifying the competencies needed by leadership personnel to understand and work with culturally and linguistically diverse populations (the competencies identified should reflect the current knowledge base); and

(ii) Preparing personnel to use those competencies through early intervention, special education, and related services training programs;

(2) All relevant coursework for the proposed program reflects current research and pedagogy on—

(i) Participation and achievement in the general education curriculum and improved outcomes for all children with disabilities; and

(ii) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families;

(3) The program is designed to integrate coursework with practicum opportunities that will enhance the competencies of special educators and related services personnel at the doctoral and post-doctoral levels to effectively (a) serve in a variety of leadership positions (e.g., direct service, research faculty, teacher training, or leadership at the State or local level) and (b) collaborate and work with regular education personnel.

(4) For programs that train personnel in early intervention, special education, or related services, the program ensures that scholars are knowledgable about: (i) The provisions of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB); (ii) the requirements for highly qualified teachers under IDEA and NCLB; and (iii) strategies to foster collaboration between regular and special education teachers; and

(5) The proposed training program includes training on developing and addressing State academic content and achievement standards, if applicable.

(b) Submit electronically annual data on each scholar who receives grant support within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at

www.osepppd.org for further information about this data collection requirement. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

(c) Budget for attendance at a three-day Project Director's meeting in Washington, DC, during each year of the project.

(d) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

(e) Include, in the application appendix, all course syllabi for the proposed training program. Course syllabi must clearly incorporate research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(f) Provide, in the application narrative, a detailed description of the program that includes the sequence of courses offered in the program and the comprehensive curriculum designed to meet program goals and obtain mastery in the following required professional domains:

(1) Research methodology.

(2) Personnel preparation.

(3) Policy/advocacy or professional practice.

(g) Include, in the application narrative under ''Quality of Project Evaluation,'' a clear and effective plan for evaluating the extent to which graduates of the training program have the knowledge and competencies necessary to provide research-based instruction and services that result in improved outcomes for children with disabilities.

(h) Communicate the results of the evaluation conducted in accordance with paragraph (g) of this priority to the Office of Special Education Programs (OSEP) in required annual performance reports for continuation funding and the project final performance report.

(i) Certify that all scholars will be recruited into the program with the intention of graduating from the program during the performance period of the grant.

(j) Certify that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship (e.g., as graduate assistants, unless the work is required to complete their training program). Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA.

(k) If the program is addressing national or regional needs, demonstrate in the application narrative the existence of the needs through appropriate research data.

(l) Ensure that at least 65 percent of the total requested budget per year will be used for student support or provide justification in the application narrative for any designation less than 65 percent. Examples of sufficient justification for proposing less than 65 percent of the budget for student support might include:

(1) A project servicing rural areas that provides long-distance training, and requires Web Masters, adjunct professors, or mentors to operate effectively.

(2) A project that is expanding or adding a new area of emphasis to the program, and as a result of this expansion, needs additional faculty or other resources, such as expert consultants, additional training supplies, or equipment that would enhance the program.

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to special education or related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

(m) Meet the statutory requirements in section 662(e) through 662(h) of IDEA.

Smith, D.D., Pion, G.M., Tyler, N.C. (2004). Leadership personnel in special education: Can persistent shortage be resolved? In A. McCray Sorrells, H.J. Rieth, & P.T. Sindelar (Eds.), *Critical Issues in Special Education: Access, Diversity, and Accountability* (pp. 258–276). New York: Pearson Allyn and Bacon.

Smith, D.S., Pion, G., Tyler, N.C., Sindelar, P., & Rosenberg, M. (2001). The study of special education leadership personnel: With particular attention to the professoriate. Vanderbilt University, Nashville, TN, University of Florida at Gainesville, Gainesville, FL, and Johns Hopkins University, Baltimore, MD. Retrieved March 23, 2008, from *http://hecse.org/pdf/SPED_Leadership_Study.pdf*

Wasburn-Moses, L., & Therrien, W.J. (in press). The impact of Leadership Personnel Grants on the doctoral student population in special education. *Teacher Education in Special Education.*

Absolute Priority 2—Combined Personnel Preparation (84.325K).

Background: State agencies, university training programs, local schools, and community-based entities acknowledge the importance of improving training programs for personnel to serve infants, toddlers, and children with disabilities (Early, D. M. & Winton, P. J., 2001; Scheuermann, Webber, Boutot, & Goodwin, 2003). In addition, the national demand for fully credentialed early intervention, special education, and related services personnel to serve infants, toddlers, and children with disabilities exceeds the available supply (McLeskey, Tyler, & Flippin, 2004). Federal support is needed to improve both the quality and supply of these personnel.

Priority: The purpose of the Combined Personnel Preparation priority is to improve the quality, and increase the number, of personnel who are fully credentialed to serve infants, toddlers, and children with disabilities—especially in areas of chronic personnel shortage—by supporting projects that prepare early intervention, special education, and related services personnel at the associate, baccalaureate, master's, and specialist levels. In order to be eligible under this priority, programs must provide training and support for students to complete, within the project period of the grant, a degree, State certification, professional license, or State endorsement in early intervention, special education, or in a related services field. Programs preparing students to be special education paraprofessionals, assistants in related services professions (e.g., physical therapist assistants, occupational therapist assistants), or educational interpreters are also eligible under this priority.

To be considered for funding under the Combined Personnel Preparation absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority must—

(a) Demonstrate, in the narrative section of the application, under ''Quality of Project Services,'' how—

(1) Training requirements and required coursework for the proposed training program incorporate research-based practices that improve outcomes for children with disabilities (including relevant research citations);

(2) The program is designed to integrate coursework with practicum opportunities that will enhance the competencies of special education personnel to effectively (a) serve and instruct children with disabilities and (b) collaborate and work with regular education personnel.

(3) The program prepares personnel to address the specialized needs of children with disabilities from diverse

cultural and language backgrounds, including limited English proficient children with disabilities, by—

(i) Identifying the competencies needed by personnel to understand and work with culturally and linguistically diverse populations (the competencies identified should reflect the current knowledge base); and

(ii) Preparing personnel to use those competencies through early intervention, special education, and related services training programs;

(4) If preparing beginning special educators, the program is designed to provide extended clinical learning opportunities, [1] field experiences, or supervised practica (such as an additional year), and ongoing high quality mentoring and induction opportunities;

(5) The program includes field-based training opportunities for scholars (as defined in 34 CFR 304.3(g)) in diverse settings including schools and settings in high-poverty communities, rural areas, and urban areas;

(6) The proposed training program will: (a) Enable scholars to be highly qualified, in accordance with section 602(10) of IDEA and 34 CFR 300.18, in the State(s) to be served by the applicant; and (b) ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards; and

(7) The training program provides student support systems (including tutors, mentors, and other innovative practices) to enhance student retention and success in the program.

(b) Include, in the narrative section of the application under ''Quality of Project Evaluation,'' a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide scientifically based or evidence-based instruction and services that result in improved outcomes for children with disabilities. Applicants also must clearly describe, under ''Quality of Project Evaluation,'' how the project will report these evaluation results to the Office of Special Education Programs (OSEP) in the grantee's annual performance reports and final performance report.

(c) Meet the statutory requirements in section 662(e) through 662(h) of IDEA.

(d) Ensure that at least 65 percent of the total requested budget per year is used for student support.

(e) Budget for attendance at a three-day Project Director's meeting in Washington, DC, during each year of the project.

(f) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(g) Include, in the application appendix, all course syllabi for the proposed training program. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(h) Submit electronically annual data on each scholar who receives grant support within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at *www.osepppd.org* for further information about this data collection requirement. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

Focus Areas

Within this absolute priority, the Secretary intends to support projects under the following four focus areas: (a) Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities, (b) Training Personnel to Serve School Age Children with Low Incidence Disabilities, (c) Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, and Children with Disabilities, and (d) Training Personnel in Minority Institutions to Serve Infants, Toddlers, and Children with Disabilities.

Note: *Applicants must identify the specific focus area i.e., (a), (b), (c), or (d), under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.*

Focus Area a: Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities. For the purpose of this focus area, early intervention personnel are those who are trained to provide services to infants and toddlers with disabilities ages birth through two, and early childhood personnel are those who are trained to provide services to children with disabilities ages three through five (in States where the age range is other than ages three through five, we will defer to the State's certification for early childhood). In States where certification in early intervention (EI) is combined with certification in early childhood (EC), applicants may propose a combined EI/EC training project under this focus area. Projects training related services, speech/language, or adapted physical education personnel are *not* eligible under this focus area (see Focus Area c).

Focus Area b: Training Personnel to Serve School Age Children with Low Incidence Disabilities. For the purpose of this focus area, low incidence personnel are special education personnel, including paraprofessionals, trained to serve school age children with low incidence disabilities including visual impairments, hearing impairments, simultaneous vision and hearing impairments, significant cognitive impairments (severe mental retardation), orthopedic impairments, autism, and traumatic brain injury. Programs preparing special education personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille must prepare those individuals to provide those services in Braille. Projects training educational interpreters are eligible under this focus area. Projects training other related services, speech/language, or adapted physical education personnel are *not* eligible under this focus area (see Focus Area c). Projects training special education pre-school personnel are eligible under Focus Area a.

Focus Area c: Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, and Children with Disabilities. Programs training related services, speech/language or adapted physical education personnel to serve infants, toddlers, or children with disabilities are eligible within this focus area. For the purpose of this focus area, related services include, but are not limited to, psychological services, physical therapy (including therapy provided by personnel trained at the Doctor of Physical Therapy (DPT) level), occupational therapy, therapeutic recreation, social work services, counseling services, audiology services (including services provided by personnel trained at the Doctor of Audiology (DAud) level), and speech/language services. Training programs in States where personnel trained to serve children with speech/language impairments are considered to be special educators are eligible under this focus area. Projects training educational

[1] Clinical learning opportunities are a method of instruction for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

interpreters are not eligible under this focus area, but may apply under Focus Area b.

Focus Area d: Training Personnel in Minority Institutions to Serve Infants, Toddlers, and Children with Disabilities. Programs in minority institutions are eligible under this focus area if they train: (a) Personnel to serve one or more of the following: infants, toddlers, and pre-school age children with disabilities; (b) personnel to serve school age children with low incidence disabilities; or (c) personnel to provide related services, speech/language, or adapted physical education to infants, toddlers, and children with disabilities. Minority institutions include institutions with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities.

Within this focus area, institutions that are recommended for funding in FY 2009 and that have not received support under the IDEA Personnel Development Program in FY 2008 will receive 10 competitive preference points. (Programs in minority institutions training personnel in Focus Areas a, b, and c are eligible within Focus Area d. Programs that are training high incidence special education personnel are *not* eligible within Focus Area d. However, programs that are training high incidence special education personnel are eligible under Absolute Priority 3—Special Education Preservice Program Improvement Grants, located elsewhere in this notice.)

Under Focus Area d, a project may budget for less than the required percentage (65 percent) for student support if the applicant can provide sufficient justification for any designation less than 65 percent. Sufficient justification for proposing less than 65 percent of the budget for student support would include support for activities such as program development, program expansion, or the addition of a new area of emphasis. Some examples include the following:

(1) A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.

(2) A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained.

(3) A project that is expanding or adding a new area of emphasis to the program may hire additional faculty or obtain other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Note: Applicants proposing projects to develop, expand, or to add a new area of emphasis to special education or related services programs must provide information, in their applications, on how these new areas will be sustained once Federal funding ends.

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) In Focus Areas b and d, the Secretary is particularly interested in programs that prepare special educators to provide instruction in core academic content areas (i.e., English/language arts, mathematics, science, foreign languages, art, history, and geography) to children with disabilities.

(2) The Secretary is also particularly interested in programs that provide enhanced support for beginning special educators (see section 662(b)(3) of IDEA).

Early, D.M. & Winton, P.J. (2001). Preparing the workforce: Early childhood teacher preparation at 2- and 4-year institutions of higher education. *Early Childhood Research Quarterly*, *16*(3), 285–306.

McLeskey, J., Tyler, N., & Flippin, S.S. (2004). The supply and demand for special education teachers: A review of research regarding the chronic shortage of special education teachers. *The Journal of Special Education, 38*(1), 5–21.

Scheuermann, B., Webber, J., Boutot, E.A., Goodwin, M. (2003). Problems with Personnel Preparation in Autism Spectrum Disorders. *Focus on Autism & Other Developmental Disabilities, 18*(3).

Absolute Priority 3—Special Education Preservice Program Improvement Grants (84.325T).

Background: State educational agencies, institutions of higher education (IHEs), and local educational agencies consistently report that personnel preparation programs for kindergarten through grade 12 (K–12) special education teachers should be restructured or redesigned so that graduates of these programs meet the highly qualified teacher (HQT) requirements in the Individuals with Disabilities Education Act (IDEA). To accomplish this goal, personnel preparation programs must ensure that their graduates who expect to be providing instruction in a core academic subject are able to meet State special education certification or licensure requirements, as well as have the necessary content knowledge, consistent with the HQT requirements in IDEA.

Federal support can assist in improving the quality of IHE programs that prepare special education teachers, and help to ensure that these teachers have the knowledge and skills needed to teach students with disabilities using evidence-based interventions.

Priority: The purpose of this priority is to improve the quality of K–12 special education teacher preparation programs and ensure that program graduates meet the HQT requirements under sections 602(10) of IDEA, and are well prepared to serve children with high incidence disabilities. For purposes of this priority, the term ''high incidence disabilities'' refers to learning disabilities, emotional disturbance, or mental retardation. In order to be eligible under this priority, applicants must currently prepare special education personnel (at the baccalaureate or master's level) to serve school age children with high incidence disabilities.

Note: This priority only supports the improvement or expansion of existing programs for high incidence personnel, such as the expansion of a program for elementary school teachers to include a program for secondary school teachers serving children with high incidence disabilities. This priority does not support the development of new programs for high incidence personnel. In addition, this priority does not support programs in IHEs that are preparing preschool teachers.

To be considered for funding under the Special Education Preservice Program Improvement Grants priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The application, programmatic, and administrative requirements are as follows:

(a) Demonstrate, in the narrative section of the application under ''Quality of Project Services,'' how—

(1) The first year of the project period will be used for planning an improved or restructured K–12 teacher preparation program that includes induction and mentoring components; revising curriculum; integrating evidence-based interventions that improve outcomes for children with

high incidence disabilities into the improved or restructured program (including providing research citations for those evidence-based interventions); and coordinating with the National Center to Enhance the Professional Development of School Personnel on the use of its Web-based training modules (see *http://www.iris.peabody.vanderbilt.edu*). Applicants must describe first-year activities and include a five-year timeline and implementation plan in their applications. This plan must describe the proposed project activities associated with implementation of the improved or restructured program that includes induction and mentoring components. Implementation of the plan may not begin without approval from OSEP;

(2) The improved or restructured program is designed to integrate coursework with practicum opportunities that will enhance the competencies of beginning special education teachers to collaborate and work with general education teachers and other personnel to provide effective services and instruction in academic subjects to children with high incidence disabilities in K–12 general education classrooms;

(3) The improved or restructured program is designed to prepare special education teachers to address the specialized needs of children with high incidence disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by identifying the competencies that special education teachers need to work effectively with culturally and linguistically diverse populations;

(4) The improved or restructured program is designed to provide extended clinical learning opportunities,[2] field experiences, or supervised practica and ongoing high quality mentoring and induction opportunities in local schools. Applicants also must demonstrate how they will coordinate with the National Center on Policy and Practice in Special Education in designing the program to provide extended clinical learning opportunities, field experiences, or supervised practica (see *http://www.coe.ufl.edu/copsse/*);

(5) The improved or restructured program is designed to include field-based training opportunities in diverse settings including schools and settings in high-poverty communities and in schools not making adequate yearly progress (AYP) under NCLB;

(6) The improved or restructured program will: (a) Enable scholars to be highly qualified, in accordance with section 602(10) of IDEA and 34 CFR 300.18, in the State(s) to be served by the applicant; and (b) ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards;

(7) The improved or restructured program is designed to provide support systems (including tutors, mentors, and other innovative practices) to enhance retention in and successful completion of the program; and

(8) The improved or restructured program will be maintained once Federal funding ends.

(b) For programs that will be restructured or re-designed to produce graduates who meet the HQT requirements for teachers who teach core academic subjects, applicants must establish partnerships with the appropriate academic departments. Funds may be used to support faculty from the academic departments for their involvement in the activities outlined in paragraph (4) of this priority. To address this requirement, applications must—

(i) Describe how representatives of relevant academic departments with expertise in the core academic subjects being addressed in the application will be involved in the partnership;

(ii) Provide evidence that such partnerships will include a permanent faculty member from the appropriate academic departments, who will be involved in developing the overall project and designing the curriculum used to train scholars in the particular core academic subject;

(iii) Provide evidence that permanent faculty members from the appropriate academic departments participated in the design of the program.

(c) Include, in the narrative section of the application under ''Quality of Project Evaluation,'' a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide scientifically based or evidence-based instruction and services that result in improved outcomes for children with disabilities. Applicants also must clearly describe, under ''Quality of Project Evaluation,'' how the project will report these evaluation results to OSEP in the grantee's annual performance reports and final performance report.

(d) Meet the statutory requirements in section 662(e) through 662(f) of IDEA.

(e) Budget for planning and improvement activities, including activities to be performed by consultants. This priority does not provide financial support for students during any year of the project.

(f) Budget for attendance at a three-day Project Director's meeting in Washington, DC, during each year of the project.

(g) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(h) Include, in the application appendix, all course syllabi for the existing teacher preparation program. Revised syllabi for the improved or restructured program must be submitted at the end of the first year of the project period.

Within this absolute priority, we give competitive preference to applications that address the following priority.

Competitive Preference Priority: Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is: *Competitive Preference Points Based on Number of High Incidence Special Education Teacher Graduates from Program in a Recent Year.*

In order to earn competitive preference points under this priority, applicants must document the number of K–12 special education teachers who graduated from a preparation program that prepares personnel (at the baccalaureate or master's level) to serve school age children with high incidence disabilities in any recent year, regardless of whether the graduates received support from a Federal grant. For purposes of this competitive preference priority, the term ''recent year'' is defined as any of the past three fiscal years (i.e., FY 2005, FY 2006, or FY 2007). The table that follows indicates how the competitive preference points will be awarded. For example, an applicant that documents 10 graduates (new K–12 high incidence special education teachers) during a recent year would earn 2 competitive preference points. An applicant that documents 30 graduates (new K–12 high incidence special education teachers) during a recent year would earn 6 competitive preference points. An applicant that documents 50 or more graduates (new K–12 high incidence special education teachers) during a recent year would earn 10 competitive preference points.

[2] Clinical learning opportunities are a method of instructions for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

Number of students graduating (new K–12 high incidence special education teachers) from program in a recent year (including non-OSEP funded graduates)	Number of competitive preference points awarded
8–19 graduates	2 points.
20–29 graduates	4 points.
30–39 graduates	6 points.
40–49 graduates	8 points.
50+ graduates	10 points.

The number of students (i.e., new K–12 high incidence special education teachers) graduating from the program must be documented in the application. A letter from the Dean or Department Chair verifying the number of high incidence graduates in a recent fiscal year would be adequate documentation for purposes of this competitive preference.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Awards: Discretionary grants for competitions CFDA 84.325D and 84.325K, and cooperative agreements for competition CFDA 84.325T.

Estimated Available Funds: The Administration has requested $88,152,592 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2009, of which we intend to use an estimated $1,450,000 for the competitions announced in this notice. Please refer to the ''Estimated Range of Awards'' column of the chart in this section for the estimated dollar amounts for individual competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications for the competitions announced in this notice, we may make additional awards in FY 2009 from the lists of unfunded applicants from individual competitions.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2009

CFDA number and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award	Estimated number of awards	Project period	Contact person
84.325D Preparation of Leadership Personnel.	July 21, 2008.	September 2, 2008.	October 29, 2008.	$175,000–$200,000.	$200,000	$200,000* ...	25	Up to 48 months.	Bob Gilmore (202) 245–7354 Rm 4083.
84.325K Combined Personnel Preparation.	July 21, 2008.	September 9, 2008.	November 10, 2008.	.....	.....	.....	.....	.....	
Focus Area a: Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities.	.....	.....	.....	$150,000–$200,000.	$175,000	$200,000* ...	14	Up to 48 months.	Maryann McDermott (202) 245–7439 Rm 4062.
Focus Area b: Training Personnel to Serve School Age Children with Low Incidence Disabilities.	.....	.....	.....	$150,000–$200,000.	$175,000	$200,000* ...	23	Up to 48 months.	
Focus Area c: Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, and Children with Disabilities.	.....	.....	.....	$150,000–$200,000.	$175,000	$200,000* ...	14	Up to 48 months.	
Focus Area d: Training Personnel in Minority Institutions to Serve Infants, Toddlers, and Children with Disabilities.	.....	.....	.....	$150,000–$200,000.	$175,000	$200,000* ...	14	Up to 48 months.	

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2009—Continued

CFDA number and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award	Estimated number of awards	Project period	Contact person
84.325T Special Education Preservice Program Improvement Grants.	July 21, 2008.	September 19, 2008.	November 18, 2008.	$100,000–$150,000 (first year of project).	$125,000 (first year of project).	$150,000** (first year of project).	21	Up to 60 months.	Bonnie Jones (202) 245–7395 Rm 4153.

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

**For the *Special Education Preservice Program Improvement Grants*, 84.325T competition:

NOTE: *We will reject any application that exceeds $500,000 for a five-year project period.* We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months for the first year of the project; we will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months over the last four years of the project. Applicants can choose to have a larger budget during the initial year of the grant up to $150,000, however, if the first year budget is over $100,000 then subsequent years need to be adjusted so that the total amount of the grant does not exceed $500,000.

NOTE: No more than one cooperative agreement will be awarded per IHE. Programs in minority institutions that are preparing special education teachers of children with high incidence disabilities are eligible to apply under this competition. For purposes of this competition, the term ''minority institutions'' include IHEs with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities.

NOTE: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs).

Note: For *Absolute Priority 3—Special Education Preservice Program Improvement Grants* (84.325T), programs in IHEs that are preparing preschool teachers are not eligible to apply under that competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*— (a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.325D, 84.325K, or 84.325T.

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 person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

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. You must limit Part III to the equivalent of no more than 50 pages for each absolute priority, 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).

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 two-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, 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: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for each of the competitions announced in this notice.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this

program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Personnel Development to Improve Services and Results for Children with Disabilities competitions, CFDA numbers 84.325D, 84.325K, and 84.325T, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the Personnel Development to Improve Services and Results for Children with Disabilities program competitions—CFDA numbers 84.325D, 84.325K, and 84.325T at *http://www.Grants.gov.* You must search for the downloadable application package for the competition to which you are applying by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.325, not 84.325D).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You also can 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 submit your application in paper format.
- If you submit your application electronically, 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).
- If you submit your application electronically, 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 4:30:00 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 4:30:00 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 4:30:00 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.325D, 84.325K, or 84.325T), 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 84.325D, 84.325K, or 84.325T), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.325D, 84.325K, or 84.325T), 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 4:30:00 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

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application packages for each competition announced in this notice.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award 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:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically based or evidence-based practices; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion and are fully

qualified under IDEA; (5) the percentage of scholars completing IDEA-funded training programs who are knowledgeable and skilled in scientifically based or evidence-based practices for infants, toddlers, and children with disabilities; (6) the percentage of low incidence positions that are filled by personnel who are fully qualified under IDEA; and (7) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: See chart in the *Award Information* section in this notice for the name, room number and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you use a TDD, call the FRS at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

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Dated: July 14, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–16544 Filed 7–18–08; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 634/P.L. 110–277

American Veterans Disabled for Life Commemorative Coin Act (July 17, 2008; 122 Stat. 2599)

H.R. 814/P.L. 110–278

Children's Gasoline Burn Prevention Act (July 17, 2008; 122 Stat. 2602)

S. 2967/P.L. 110–279

To provide for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after operations of the Senate Restaurants are contracted to be performed by a private business concern, and for other purposes. (July 17, 2008; 122 Stat. 2604)

Last List July 17, 2008

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CFR CHECKLIST

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§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
40–49	(869–064–00095–5)	31.00	[6] Apr. 1, 2008
50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date
300–499	(869–064–00097–1)	64.00	Apr. 1, 2008
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
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
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
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
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[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.