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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0027; FV07–989–1 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2006–07 Crop Natural (sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2006–07 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 90 percent free and 10 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: *Effective Date:* Novemoer 19, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2006–07 crop until the reserve raisins from that crop are disposed of under the marketing order.

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 rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect the action that established final free and reserve percentages for NS raisins for the 2006–07 crop year, which began August 1, 2006, and ended July 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that established final volume regulation percentages for 2006–07 crop NS raisins covered under the order. The volume regulation percentages are 90 percent free and 10 percent reserve and were established through an interim final rule published on April 9, 2007 (72 FR 17362). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages for NS raisins on November 21, 2006.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2006, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and

low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2006–07 trade demand for NS raisins at 219,870 tons as shown below.

COMPUTED TRADE DEMAND

[Natural condition tons]

	NS Raisins
Prior year's shipments	301,460
Multiplied by 90 percent	0.90
Equals adjusted base	271,314
Minus carryin inventory	111,444
Plus desirable carryout	60,000
Equals computed NS trade demand	219,870

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The Committee met on September 6, 2006, and announced preliminary percentages for Zante Currant raisins. It met again on October 4, 2006, and announced preliminary percentages and a preliminary crop estimate for NS raisins of 259,557 tons, which is about 21 percent lower than the 10-year average of 327,410 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 111,444 tons to the 259,557-ton crop estimate, plus an additional 31,975 tons of reserve raisins released to handlers for free use in August 2006, resulted in a total available supply of 402,976 tons, which was significantly higher (183 percent) than the 219,870-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 85 percent of the computed trade demand since a minimum field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 72 percent free and 28 percent reserve.

In addition, preliminary percentages were announced for Dipped Seedless, Golden Seedless, and Other Seedless raisins. It was ultimately determined at Committee meetings held on November 21, 2006, and January 23, 2007, that volume regulation was only warranted for NS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its November 21, 2006, meeting, the Committee announced interim percentages for NS raisins to release slightly less than the full trade demand. Based on a revised NS crop estimate of 244,300 tons (down from the October estimate of 259,557 tons), interim percentages for NS raisins were announced at 89.75 percent free and 10.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages at its November 21, 2006, meeting to release the full trade demand for NS raisins. Final percentages were recommended at 90 percent free and 10 percent reserve. The Committee's calculations and determinations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins
Trade demand	219,870
Divided by crop estimate	244,300
Equals the free percentage	90.00
100 minus free percentage equals the reserve percentage	10.00

By the end of the crop year, final deliveries of NS raisins totaled 282,999 tons. Thus, handlers were provided with an additional 63,129 tons over the computed trade demand, but the additional tonnage did not appear to impact marketing conditions.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS raisins by the establishment of final percentages, which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

Based on 2005–06 NS shipments of 301,460 natural condition tons, 30,146 tons should have been made available in each of the 10 plus 10 offers, or a total of 60,292 tons. However, this amount was not available in the reserve. Thus, all available reserve pool raisins were offered to handlers for free use through the 10 plus 10 offers.

The first 10 plus 10 offer was made in February 2007. A total of 30,146 tons was made available to raisin handlers; all the raisins were purchased and released to handlers during the 2006–07 crop year. The second offer was made in July 2007. A total of 20,923 tons (the balance of the reserve pool) was made available to handlers; 14,793 tons were purchased and released to handlers in 2007–08. Adding the 30,146 tons of 10 plus 10 reserve raisins to the 219,870 ton trade demand figure, plus the 111,444 tons of 2005–06 carryin NS inventory, plus the 31,975 tons of 10 plus 10 raisins released to handlers in August 2006, equates to 393,435 tons of natural condition raisins, or 370,686 tons of packed raisins, that were available to handlers for free use or primary markets. This is about 130 percent of the quantity of NS raisins shipped during the 2005–06 crop year (301,460 natural condition tons or 284,030 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments during a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

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 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 23 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 10 handlers have sales less than $6,500,000.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions. If the primary market (the normal domestic market) is over-supplied with raisins, grower prices decline substantially.

Pursuant to § 989.54(d) of the order, this rule continues in effect the action that established final volume regulation percentages for 2006–07 crop NS raisins. The volume regulation percentages are 90 percent free and 10 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation was warranted this season because acquisitions of 282,999 tons through July 31, 2007, combined with the carryin inventory of 111,444 tons, plus 31,975 tons of 10 plus 10 reserve raisins that were released to handlers in August 2006, resulted in a total available supply of 426,418 tons, which is about 194 percent higher than the 219,870 ton trade demand.

The volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, about 64 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970s, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94.

According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $904.60 in 1993–94 to a high of $1,049.20 in 1996–97. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Record large crops followed and producer prices dropped dramatically for the 2000–01 through 2003–04 crop years, as inventories grew while demand stagnated. However, producer prices were higher for the 2004–05 and the 2005–06 crop years, as noted below:

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer prices (per ton)
2005–06	319,126	[1] $998.25
2004–05	265,262	[2] 1210.00
2003–04	296,864	567.00
2002–03	388,010	491.20
2001–02	377,328	650.94
2000–01	432,616	603.36
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. Domestic shipments have been generally increasing in recent years. Although domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000, they increased from 174,117 packed tons during the 2000–01 crop year to 186,358 tons during the 2005–06 crop year. Export shipments ranged from a high of 107,931 packed tons in 1991–92 to a low of 91,599 packed tons in the 1999–2000 crop year. Since that time, export shipments increased to 106,755 tons of raisins during the 2004–05 crop year, but fell to 97,672 tons in 2005–06.

The per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.44 pounds in 2005. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has increased in two out of the last three years (as reflected in increased commercial shipments), production has been decreasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large

crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, 388,010 tons for the 2002–03 crop year, 296,864 for the 2003–04 crop year, and 265,262 tons for the 2004–05 crop year. After three crop years of high production and a large 2001–02 carryin inventory, the industry diverted raisin production to other uses or removed bearing vines. Diversions/removals totaled 41,000 acres in 2001; 27,000 acres in 2002; and 15,000 acres of vines in 2003. These actions resulted in declining deliveries of 296,864 tons for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. Although deliveries increased in 2005–06 to 319,126 tons, this may have been because fewer growers opted to contract with wineries, as raisin variety grapes crushed in 2005–06 decreased by 161,000 green tons, the equivalent of over 40,000 tons of raisins.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

The reserve percentage limits what handlers can market as free tonnage. Data available as of July 31, 2007, showed that deliveries of NS raisins were at 282,999 tons. The 10 percent reserve limited the total free tonnage to 254,699 natural condition tons (.90 × the 282,999 ton crop). Adding the 254,699 ton figure with the carryin of 111,444 tons, plus the 62,121 tons of 10 plus 10 reserve raisins that were released to handlers during the 2006–07 crop year (31,975 tons in August 2006 and 30,146 tons in March 2007) made the total free supply equal to 428,264 natural condition tons.

To assess the impact that volume regulation has on the prices producers receive for their product, a price dependent econometric model was estimated. This model is used to estimate producer prices both with and without the use of volume regulation. The volume regulation used by the raisin industry would result in decreased shipments to primary markets. Without volume regulation the primary market (domestic) could be over-supplied resulting in lower producer prices and the build-up of unwanted inventories.

With volume regulation, producer prices are estimated to be approximately $65 per ton higher than without volume regulation. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume regulation. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it was determined that volume regulation was warranted during the 2006–07 season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages continue in effect the release of the full trade demand and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 and 2004–05 crop years, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

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.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the August 15, September 6, October 4, November 21, 2006, and the January 23, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Reserve Sales and Marketing Subcommittee met on August 15, September 6, October 4, November 21, 2006, and January 23, 2007, and discussed these issues in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on April 9, 2007. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and raisin handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended June 8, 2007. One comment was received during the comment period; it was not relevant to the rulemaking action. Accordingly, no changes were made to the rule, based on comment 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/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 17362, April 9, 2007) 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.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 72 FR 17362 on April 9, 2007, is adopted as a final rule without change.

Dated: October 15, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–20621 Filed 10–18–07; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3150–AH84

Notification of the Plan for the Transition of Regulatory Authority Resulting From the Expanded Definition of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of publication of transition plan.

SUMMARY: In accordance with Section 651e of the Energy Policy Act of 2005, the U.S. Nuclear Regulatory Commission is publishing a "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (transition plan) to facilitate an orderly transition of regulatory authority with respect to the byproduct material defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954, as amended. A copy of the final transition plan is provided as Appendix A to this document.

FOR FURTHER INFORMATION CONTACT: Kim K. Lukes, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6701 or e-mail *KXK2@NRC.GOV*.

Dated at Rockville, Maryland, this 11th day of October, 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Appendix A—A Plan for the Transition of Regulatory Authority Resulting From the Expanded Definition of Byproduct Material

I. Introduction

The Energy Policy Act of 2005 (EPAct) expanded U.S. Nuclear Regulatory Commission (NRC or Commission) regulatory authority over radioactive materials to include new byproduct material, as defined in paragraphs (3) and (4) of section 11e. of the Atomic Energy Act of 1954, as amended (AEA), hereinafter referred to as the new byproduct material. The expanded NRC authority pre-empted existing State regulatory authority over the subject materials. NRC is authorized, however, to discontinue its regulatory authority over the new byproduct material under certain conditions, allowing States to exercise regulatory authority over these materials.

The EPAct requires the Commission to prepare and publish a transition plan to facilitate an orderly transition of regulatory authority with respect to the new byproduct material. The plan must address States that have, before the date on which the plan is published, entered into agreements with the Commission, under section 274b. of the AEA [1] (Agreement States), and States that have not entered into such agreements (non-Agreement States). The plan must also include a description of the conditions under which a State may exercise regulatory authority over the new byproduct material.

To meet the requirements of the EPAct, the transition plan must include a statement of the Commission that any Agreement between the Commission and a State [2] under section 274b. of the AEA, covering byproduct material and entered into before the date of publication of the transition plan, must be considered to include the new byproduct material, if the Governor of the State certifies to the Commission, on the date of the publication of the transition plan that: (1) The State has a program for licensing the new byproduct material that is adequate to protect the public health and safety, as determined by the Commission; and (2) the State intends to continue to implement the regulatory responsibility of the State with respect to the new byproduct material. This transition plan is being promulgated in response to those requirements.

II. Background

On August 8, 2005, the President signed into law the Energy Policy Act of 2005. Public Law No. 109–58, 119 Stat 594 (2005). Before then, byproduct material had been defined in section 11e. of the AEA as: (1) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or using special nuclear material; and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Section 651(e) of the EPAct, among other things, expanded the definition of byproduct material in section 11e. of the AEA, thereby placing additional byproduct material under NRC's jurisdiction. Section 651(e) further required the Commission to provide a regulatory framework for licensing and regulating this additional byproduct material.

In particular, section 651(e) of the EPAct expanded the definition of byproduct material by adding paragraphs (3) and (4) to the definition of byproduct material in section 11e. Section 11e.(3) defines, as byproduct material:

"(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; or (B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity.

Section 11e.(4) defines, as byproduct material, any discrete source of

[1] Section 274b. of the AEA authorizes the Commission to enter into an agreement with the Governor of a State that provides for discontinuance of the Commission's regulatory authority in the State over byproduct material as defined in section 11e., source materials, and special nuclear materials in quantities not sufficient to form a critical mass.

[2] Section 274n. of the AEA defines the term "State" to mean any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia.

naturally occurring radioactive material (NORM),[3] other than source material, that—

(A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after the date of enactment of this paragraph is extracted or converted after extraction for use in a commercial, medical, or research activity."

III. The Agreement State Program

In 1959, the AEA was amended to adopt section 274, *Cooperation with States*. As provided in section 274b., the Governor of a State may request an Agreement with the Commission in which NRC discontinues, and the State assumes, regulatory authority over categories of materials, that may include source, byproduct, and special nuclear materials (in quantities insufficient to form a critical mass). Collectively, the materials that are authorized for regulation by States under such Agreements are known as "AEA materials" or "Agreement materials."

The Commission may enter into an Agreement if it finds that the State program is compatible with the Commission's program for regulation of such materials, and that it is adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement. Under section 274j.(1) of the AEA, the Commission must periodically review Agreement State programs and the actions the States take under the Agreements, to ensure compliance with the provisions of that section.

A. Concept of Compatibility

In 1997, the Commission adopted a Policy Statement declaring that an Agreement State radiation control program is compatible with the Commission's regulatory program when the State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of agreement material Nationwide [see *Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs*, (62 FR 46517; September 3, 1997)]. Thus, compatibility focuses primarily on the potential effects of a State action or inaction either on a Nationwide basis or on interstate commerce crossing into other jurisdictions.

Generally, a State program is compatible if the elements of the program are similar to the corresponding elements of the NRC program. Some elements, such as basic radiation protection standards and program elements with transboundary implications, should be essentially identical, whereas other elements may need only to meet the same essential objectives. The detailed criteria for Agreement State compatibility are set out in NRC Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs*.

B. Concept of Adequacy

The 1997 Commission Policy Statement declares that an Agreement State radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance that the level of protection afforded by the State program is at least as protective as NRC's materials regulatory program.

The continuing adequacy and compatibility of an Agreement State radiation control program is determined through the Integrated Materials Performance Evaluation Program (IMPEP). NRC periodically reviews the adequacy and compatibility of each Agreement State's radiation protection program using the same set of performance criteria used to evaluate the equivalent NRC licensing and inspection programs. For further information on this program, please see NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, on the NRC Web site (*http://www.nrc.gov*).

IV. Regulation of Radioactive Materials Before the EPAct

For the purposes of this discussion, before the EPAct, radioactive materials could be divided into three groups: those regulated only by NRC (e.g., formula quantities of special nuclear material); those regulated only by State or local agencies [e.g., Naturally Occurring and Accelerator-Produced Radioactive Material (NARM)]; and those radioactive materials that may be regulated by NRC, or by a State under an Agreement pursuant to section 274b. of the AEA.

Since 1954, NRC (and its predecessor agency, the U.S. Atomic Energy Commission) has regulated the non-military use of a limited set of radioactive materials. Collectively, the set of regulated materials is known as AEA material. The basis for assertion of Federal authority over the AEA materials was the belief that they posed (at that time) a new hazard beyond the ability of the States to control. NORM (mostly radium-226) and accelerator-produced radioactive materials (ARM) were relatively rare and did not pose an overwhelming problem for the States to control.

AEA material originally consisted of source and special nuclear materials, and byproduct materials as now defined in section 11e.(1). In 1978, the AEA definition of "byproduct material" was amended to add section 11e.(2), that included the tailings from uranium or thorium ore processed primarily for their source material content. Other NORM and ARM were not included in the definition of byproduct material before enactment of the EPAct, and thus were not AEA materials and were not subject to NRC regulation. These radioactive materials were under individual State regulatory authority.

V. Regulatory Changes Required by Section 651(e) of the EPAct

By amending the definition of "byproduct material" to include certain ARM and NORM, including radium-226, the EPAct has made these radioactive materials AEA materials subject to NRC regulation. Note that only certain ARM and NORM that meet the criteria set out in the EPAct are byproduct material. The criteria for ARM that is defined as byproduct material are that the material: (1) Is made radioactive by use of a particle accelerator; (2) is produced, extracted, or converted after extraction, before, on, or after the enactment date of the EPAct; and (3) is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity. For radium-226 and other NORM to be byproduct material, it must meet the last two criteria, plus be a "discrete source." ARM and NORM that do not meet these criteria are not AEA byproduct material.

Independent State regulation of the new byproduct material is pre-empted by the EPAct. States now may only regulate the materials through an agreement with the Commission, under section 274b. of the AEA. Other ARM and NORM that do not meet the definition of byproduct material could continue to be regulated under individual State authority.

This transition plan addresses only transitions of authority related to the newly defined byproduct material described in Section 651(e) and not to issues raised in other sections of the EPAct.

[3] Note: At this time, NRC has not identified any NORM currently in use that would meet the definition of section 11e.(4).

VI. Transition of Authority

A. Preliminary Activities

At the time the EPAct was signed into law, NRC did not have regulations in place that would specifically apply to the new byproduct material. Time was needed for the development of a revised regulatory program, to allow for the orderly transition of regulatory authority over this material.

Section 651(e)(5) of the EPAct authorizes the Commission to issue waivers of the requirements of section 651(e) for up to 4 years, if the Commission determines that the waiver is in accordance with the protection of the public health and safety and promotion of the common defense and security. The Commission determined that such a waiver should be granted to entities engaging in activities involving the new byproduct material, and it would be in the best interests of the public to allow the continued use of the new byproduct material, and to allow the States to continue to regulate the new byproduct material until the Commission could codify new regulations for these materials. The Commission issued such a waiver on August 31, 2005 (70 FR 51581). As required by section 651(e) of the EPAct, the Commission must terminate any waiver issued under section 651(e), regarding a State, on determining that: (1) The State has entered into an agreement with the Commission under section 274b. of the AEA; (2) the Agreement covers section 11e.(3) or 11e.(4) byproduct material; and (3) the State's program for licensing such byproduct material is adequate to protect the public health and safety. In addition, any waiver issued under section 651(e) may be effective only through August 7, 2009, unless the Commission terminates it earlier.

NRC conducted a rulemaking to cover the new byproduct materials. The final rule was published on October 1, 2007 (72 FR 55864), in accordance with the EPAct requirements. The rule is to become effective 60 days after publication for some licensees, and later for others, as described in this transition plan and the **Federal Register** Notice for the final rule. Revisions to NRC Policy and Guidance documents were undertaken in parallel with the rulemaking.

B. Conditions Under Which a State May Exercise Authority Over 11e.(3) and 11e.(4) Byproduct Material

A State may exercise regulatory authority over the new byproduct material in one of two ways: (1) Under the Commission-issued waiver; or (2) under an AEA section 274b. Agreement. Starting on August 8, 2009, or earlier if the waiver is terminated for the State under EPAct section 651(e)(5)(B)(ii), the State may exercise its own authority over the new byproduct material only under an AEA section 274b. Agreement.

If the State does not already have such an Agreement, the Governor of the State may request an Agreement with the Commission. The Commission may enter into an Agreement if the documentation supporting the Governor's request demonstrates that: (1) The State has a program to regulate the materials covered by the proposed Agreement; and (2) the State program is adequate to protect the public health and safety and is compatible with the Commission's program for byproduct material.

NRC staff will evaluate the Governor's request using NRC/Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, *Processing an Agreement*. This procedure is posted on the NRC Web site (*http://www.nrc.gov*). Printed hard copies may also be obtained from the NRC Public Document Room.

The Commission may enter into an Agreement covering one or more of the following categories of materials: source material; special nuclear material in quantities not sufficient to form a critical mass; byproduct material as defined in section 11e.(1), 11e.(2), 11e.(3), or 11e.(4); the regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and the safety evaluation of sealed sources or devices containing sealed sources.

1. Transition of Authority in States That Have Entered Into Agreements With the Commission Under AEA Section 274b., Before Publication of This Plan

There are two ways an existing Agreement State may include the new byproduct material in its AEA section 274b. Agreement: (1) The Governor of the State provides the certification described in section 651(e)(4)(C)(iii)(II) of the EPAct on the date of publication of the transition plan; or (2) using the standard process, whereby the Governor requests an amendment to the State's Agreement, as provided in section 274 of the AEA.

The Governor's certification avoids the need to amend the State's Agreement in accordance with the formal requirements of section 274 of the AEA. If a Governor chooses not to provide the certification described in the EPAct, NRC will assert its authority to regulate the new byproduct material.

2. Basis for Finding Adequacy in Reviewing Governor Certifications

For Agreement States whose Governors provide a certification, the Commission will find the States' programs adequate to protect health and safety if the criteria of NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, are satisfied. For an Agreement State whose program for licensing 11e.(1) byproduct material has been previously evaluated under IMPEP, the Commission will base its determination of adequacy on the State's prior IMPEP findings if: (1) The State's program for licensing 11e.(3) and 11e.(4) byproduct material is not separate and distinct [4] from its program for licensing 11e.(1) byproduct material; (2) the State intends to continue to license the new byproduct material under its existing program; and (3) no changes have been made to the State's licensing program that would impact the previous IMPEP finding of adequacy. If the State provides confirmation that these criteria are met, the Commission will consider a finding of adequate performance from the State's last IMPEP review as an indicator that the State's program for licensing section 11e.(3) and 11e.(4) byproduct material is adequate to protect health and safety.

For a new Agreement State that has not yet had a program review under IMPEP, the Commission will base its determination of adequacy on the following: (1) The State's program for licensing 11e.(3) and 11e.(4) byproduct material is not separate and distinct from its program for licensing 11e.(1) byproduct material; (2) the State intends to continue to license the new byproduct material under its existing program; and (3) no changes have been made to the State's licensing program that would impact the Commission's decision to enter into the AEA section 274b. Agreement.

The Governor's certification should be addressed to the Chairman of the Commission. On receipt, the Chairman or his designee will review the certification. If the Governor's certification contains the statements required by the EPAct, and the Commission determines that the State's program to license the new byproduct material is adequate to protect health and safety, the Chairman will accept the Governor's certification on behalf of the Commission, and the Governor will be notified of the acceptance. As of the

[4] The Commission understands that the Agreement States license NARM and section 11e.(1) byproduct material without distinguishing between the materials.

date that the certification is accepted by the Commission, the State's Agreement will be considered to include AEA section 11e.(3) and 11e.(4) byproduct material, and the waiver will be terminated for the State. The certification will become a part of the Agreement, but the Agreement document will not be otherwise amended.

The NRC will verify the adequacy of the State's program to license the new byproduct material during subsequent IMPEP reviews.

3. Agreement States That Elect Not To Include AEA Section 11e.(3) and 11e.(4) Byproduct Material in Their Agreements

If an Agreement State elects not to continue to regulate the new byproduct material under an existing section 274b. Agreement, the State should notify the Commission that it intends to discontinue its regulatory authority for the new byproduct material. NRC is requesting that such an Agreement State also provide NRC with a list of affected users/licensees, in its notification.

To facilitate an orderly transition of regulatory authority for an Agreement State that does not intend to continue to regulate the new byproduct material, NRC intends to terminate the waiver for the State, and all individuals in the State, before August 8, 2009. The timing of the waiver termination for the State will be determined in consultation with representatives of the State's regulatory program.

NRC plans to use the phased approach for earlier waiver terminations described in Section VI.C.1., "Non-Agreement States That Do Not Request an Agreement," for Agreement States that do not intend to continue to regulate the new byproduct material. This approach will prevent an abrupt transition of authority on the date the waiver expires. Likewise, NRC plans to notice waiver terminations in the **Federal Register**, for Agreement States that do not intend to continue to regulate the new byproduct material, in the same manner as described in Section VI.C.1., for non-Agreement States that do not request Agreements. Also, the actions with which users of the new byproduct material in such Agreement States will be required to comply will be the same as those described in Section VI.C.1., for users in non-Agreement States that do not request Agreements.

4. Agreement States That Do Not, on the Date of Publication of the Transition Plan, Certify Adequacy for 11e.(3) and 11e.(4) Byproduct Material

Section 651(e) of the EPAct provides that any Agreement covering byproduct material, as defined in paragraph (1) or (2) of section 11e. of the AEA, entered into between the Commission and a State under section 274b. of that Act before the date of publication of this transition plan shall be considered to include byproduct material, as defined in paragraph (3) or (4) of section 11e. of the AEA, if the Governor of the State certifies to the Commission on the date of publication of this transition plan that: (a) The State has a program for licensing byproduct material, as defined in paragraph (3) or (4) of section 11e. of the AEA, that is adequate to protect the public health and safety, as determined by the Commission; and (b) the State intends to continue to implement the regulatory responsibility of the State with respect to the byproduct material.

If the Governor of a State has not made such a certification to the Commission, and the State intends to continue to implement its regulatory authority over these materials, the State may be required to amend its AEA section 274b. Agreement to include the new byproduct material.

C. Transition of Authority in States That Have Not Entered Into an Agreement With the Commission Under AEA Section 274b. (Non-Agreement States) Before Publication of This Plan

1. Non-Agreement States That Do Not Request an Agreement

Any State that, on August 8, 2009, does not have an Agreement with the Commission under section 274b. of the AEA, which covers 11e.(3) or 11e.(4) new byproduct material, must discontinue its regulatory authority over the byproduct material.

To facilitate an orderly transition of regulatory authority for States that do not intend to establish AEA section 274b. Agreements with the Commission before August 8, 2009, NRC intends to terminate the waiver for such States, and all individuals in such States, before August 8, 2009. NRC plans to use a phased approach for the earlier waiver terminations, to prevent an abrupt transition of authority on the date the waiver expires. The timing of waiver terminations for the States will be determined in consultation with representatives of the States' regulatory programs. Waiver terminations will be executed for groups of States, at periodic intervals occurring between the effective date of the rule and August 7, 2009. Starting at Midnight, local time, on the effective date of the waiver termination, NRC will assume regulatory authority over section 11e.(3) and 11e.(4) byproduct material within the States.

Each waiver termination for a group of States will be noticed in the **Federal Register** as a "Notification of Waiver Termination and Implementation Dates of Rule." To the extent possible, each waiver termination will be noticed approximately 6 months before the effective date of the waiver termination. The notifications will provide the effective date of the waiver terminations, and will identify the States to which the waiver terminations will apply. The notifications also will provide specific actions with which users of the newly added byproduct material in the affected States will need to comply to continue to use the material. The actions with which the users will be required to comply are expected to be similar to those provided for Government agencies and federally recognized Indian Tribes in NRC's amended rules applicable to the new byproduct material October 1, 2007 (72 FR 55864), which become effective on November 30, 2007. In a manner similar to the process outlined in Section VI.F., if non-Federal entities in these States wish to continue using the new byproduct material, they will either: (1) Be required to apply for license amendments for the new byproduct material, within 6 months from the date the waiver is terminated for their State, if they hold an NRC specific byproduct materials license; or (2) submit a license application for the new byproduct material, within 12 months from the date the waiver is terminated for their State.

NRC plans to terminate the waiver no later than August 7, 2009, for all individuals in States that do not plan to establish AEA section 274b. Agreements with NRC. This should allow all users in States sufficient time to submit license applications within the periods described above.

NRC will cooperate with States for which the waiver will be terminated to identify users of the byproduct material within the States, and provide notifications to the users of the impending transition of authority. In addition to the notifications described above, NRC may issue press releases, and initiate interactions with industry groups and other stakeholders in an effort to ensure that all users in the affected States are aware of the transition of authority and requirements for continued use of the new byproduct material.

2. Non-Agreement States That Request AEA Section 274b. Agreements Covering Section 11e.(3) or 11e.(4) Byproduct Materials

The Governor of any State that does not have an Agreement with the Commission under section 274b. may request an Agreement that covers section 11e.(3) or 11e.(4) byproduct material, and also may request an Agreement that covers any or all of the other materials and activities as described in the discussion in Section VI.B., "Conditions Under Which a State May Exercise Authority over 11e.(3) and 11e.(4) Byproduct Material." The request should follow the NRC/FSME Procedure SA–700, *Processing an Agreement,* starting with a request for an Agreement as soon as practical. A copy of the procedure is available on the NRC Web site (*http://www.nrc.gov*).

The NRC staff will recommend that the Commission approve an Agreement if the State's Program for regulating the requested byproduct materials meets the criteria in NRC/FSME Procedure SA–700, *Processing an Agreement.* If the Commission approves, the Agreement will become effective on a date selected by the State, and specified in the Agreement. If the effective date is before August 8, 2009, the Commission will terminate the waiver for all persons in that State on the effective date of the Agreement.

Requests from States to enter into 274b. Agreements before the time-limited waiver expires on August 7, 2009, will be reviewed in accordance with the NRC/FSME Procedure SA–700, Processing an Agreement. Every effort will be made to complete an Agreement as soon as practical, without compromising quality and completeness. The Commission understands that situations may arise that may delay the completion and effective date of Agreements. If any Agreements cannot be completed before the waiver expires on August 7, 2009, the Commission may consider, on a case-by-case basis, options to limit the impact on affected users of 11e.(3) and 11e.(4) byproduct material in the States.

D. Transition of Exempt Distribution Licenses for NARM From State Jurisdiction to NRC Jurisdiction

The Commission, pursuant to 10 CFR 150.15, retains the authority to license the distribution of byproduct material to persons who are exempt from regulatory requirements. Since the Commission did not have jurisdiction over section 11e.(3) and 11e.(4) byproduct material previously, the States had the authority to issue licenses for the distribution of NARM to persons who were exempt from licensing and regulatory requirements. With the expansion of the definition of byproduct material, NRC authority pre-empts the States' authority to issue such licenses.

NRC understands that there are a limited number of State issued exempt distribution licenses for the new byproduct material, which will transfer to NRC on termination of the waiver for the State. The specifics of the transfer will be addressed directly with the involved States and distributors, on a case-by-case basis. On expiration or earlier termination of the waiver, NRC will issue licenses for the distribution of products containing AEA section 11e.(3) and 11e.(4) byproduct material to persons who are exempt from licensing and regulatory requirements.

E. Transition of Sealed Source or Device Registration Certificates for NARM From State Jurisdiction to NRC Jurisdiction

Since, previously, the States had jurisdiction over NARM (including the new byproduct material), the States also had authority for the evaluation of radiation safety information on sealed sources or devices (SSDs) containing NARM, and the registration of such SSDs for distribution. Most Agreement States' section 274b. Agreements provide for the Commission to discontinue its authority for the evaluation of radiation safety information on SSDs containing byproduct materials, and for the registration of the SSDs for distribution. An Agreement State whose section 274b. Agreement provides for the Commission to discontinue its SSD authority shall retain this authority and responsibility for SSDs containing the new byproduct material, after the waiver expires on August 7, 2009, or on earlier waiver termination by the Commission, if the State's 274b. Agreement includes the new byproduct material.

After the waiver expires on August 7, 2009, or on earlier waiver termination by the Commission, NRC will assume regulatory authority over radiation safety evaluations and registration of SSDs containing the new byproduct material in non-Agreement States, and in Agreement States whose section 274b. Agreements do not provide for the Commission to discontinue its authority for radiation safety evaluations and registration of SSDs containing byproduct material. In addition, NRC will also assume regulatory authority over all radiation safety evaluations and registrations of exempt distribution devices containing the new byproduct material that previously may have been licensed by the States.

NRC will cooperate with States for which the regulatory authority over radiation safety evaluations and registrations of SSDs containing the new byproduct material will transfer from the State to the NRC, to provide a notification to affected holders of active SSD registrations in the States, of the impending transition of authority. NRC is also requesting that such States provide NRC with copies of affected SSD registrations.

F. Federal Entity Licensees of the Commission and Unlicensed Federal Users

Under the AEA byproduct, source, and special nuclear material, licenses for Government agencies and federally recognized Indian Tribes are issued by the Commission, and are not subject to State regulation. Since NRC was not previously authorized to license NARM, these entities may not have an NRC license authorizing the new byproduct material. NRC plans to terminate the waiver for Government agencies and federally recognized Indian Tribes on the effective date of the final rule, which is November 30, 2007, and these users will be subject to the new requirements on that date. Such entities who wish to continue to use the new byproduct material must either: (1) Apply for license amendments for the new byproduct material, within 6 months from the effective date of the rule, if they hold NRC specific byproduct materials licenses; or (2) submit license applications for the new byproduct material, within 12 months from the effective date of the rule, if new NRC specific byproduct materials licenses are needed.

G. Notification of Transition Actions

Section 651(e)(5)(c) of the EPAct requires NRC to publish a notice of any waiver granted under section 651(e)(5) in the **Federal Register**. As described above, NRC published such a waiver on August 31, 2005. NRC is required by section 274e.(1) of the AEA to notice in the **Federal Register** any new or amended AEA section 274b. Agreements. Any new or amended Agreements will be published as required by section 274e.(1) of the AEA.

Although the EPAct does not specifically require NRC to notice a waiver termination, NRC will publish in the **Federal Register** any "Notification of Waiver Termination and Implementation Dates of Rule." NRC will also make publicly available the acceptance of a Governor's certification.

NRC normally provides notifications of any new AEA section 274b. Agreements to Congress, Federal Agencies, and States. NRC plans to also notify these entities of any waiver termination.

References

1. Atomic Energy Act of 1954, as amended.
2. Conference of Radiation Control Program Directors, Inc. (CRCPD), "Suggested State Regulations for Control of Radiation," available at the CRCPD Web site *http://www.crcpd.org/free_docs.asp*.
3. Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).
4. U.S. Nuclear Regulatory Commission, Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," available in the Electronic Reading Room on the NRC Web site *http://www.nrc.gov*.
5. U.S. Nuclear Regulatory Commission, Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," available in the Electronic Reading Room on the NRC Web site *http://www.nrc.gov*.
6. U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Procedure SA–700, "Processing an Agreement," available at the NRC, Office of Federal and State Materials and Environmental Management Programs Web site *http://nrc-stp.ornl.gov/*.
7. U.S. Nuclear Regulatory Commission, "Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs," 62 FR 46517, September 3, 1997.
8. U.S. Nuclear Regulatory Commission, Guidance on New Agreements, NRC Handbook 5.8, "Proposed Section 274b. Agreements With States," available in the Electronic Reading Room on the NRC Web site *http://www.nrc.gov*.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AI22

National Source Tracking of Sealed Sources; Revised Compliance Dates

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the compliance dates for licensees to begin reporting source transactions and initial source inventory information to the National Source Tracking System for nationally tracked sources. No other requirements related to the National Source Tracking System are being revised by this rule.

DATES: *Effective Date:* This final rule is effective October 19, 2007. *Compliance Dates:* Compliance with the reporting provisions in 10 CFR 20.2207 is required by January 31, 2009 for both Category 1 sources and Category 2 sources.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion and Need for the Rule

The President signed the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594) into law on August 8, 2005. It contains a provision on national source tracking that requires the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. The NRC issued the final rule for the National Source Tracking System on November 8, 2006 (71 FR 65686).

The National Source Tracking System rule requires licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. This information will be entered into a computerized data base. The National Source Tracking System will capture information on the origin of each nationally tracked source (manufacture or import), all transfers to other licensees, all receipts of nationally tracked sources, and endpoints of each nationally tracked source (disassembly, disposal, decay, or export). Ultimately, the National Source Tracking System will be able to provide a domestic life history account of all nationally tracked sources.

The compliance dates for licensees to report initial source inventories was November 15, 2007, for Category 1 sources and November 30, 2007, for Category 2 sources. These were also the dates to start reporting source transactions for entry into the system. The NRC anticipated that system development and all testing would be complete and the National Source Tracking System would be operational by November 2007. However, system development has taken longer than anticipated and the system will not be ready to accept data by November 2007. Therefore, the NRC is revising the compliance dates for which reporting is to start.

The requirements for Category 1 nationally tracked sources will now be implemented by January 31, 2009. This means that by this date any licensee that possesses a Category 1 level source must have reported its initial inventory and must begin reporting all transactions involving Category 1 sources to the National Source Tracking System. The requirements for Category 2 nationally tracked sources will also be implemented by January 31, 2009. By this date, all licensees must have reported their initial inventories of Category 2 nationally tracked sources and begin reporting all transactions to the National Source Tracking System.

II. Section by Section Analysis of Substantive Changes

Section 20.2207—Reports of Transactions Involving Nationally Tracked Sources

Paragraph (h) is revised to require a licensee to report its initial inventory of Category 1 nationally tracked sources by January 31, 2009, and the inventory of Category 2 nationally tracked sources by January 31, 2009.

III. Bases and Findings for Dispensing With Notice and Comment and for Making Rule Immediately Effective

Generally, NRC rulemaking involves issuing rules using the public notice and comment procedures set forth in the Administrative Procedure Act (APA). Typically, a proposed rule is issued for comment and any comments submitted are evaluated in the agency's development of the final rule. But under 5 U.S.C 553(b)(3)(B), a Federal agency such as the NRC may dispense with those procedures where it finds for "good cause" that notice and public procedures thereon are "impracticable, unnecessary, or contrary to the public interest." In this case, notice-and-comment procedures are not required because the usual public rulemaking procedures are impracticable. The National Source Tracking System will not be ready to accept data received from licensees by the original compliance dates in the final rule. Compliance with the rule by those dates is not feasible, and no purpose would be served by seeking public comment on whether to extend the compliance dates. Therefore, under 5 U.S.C. 553(b)(3)(B), good cause exists to dispense with notice and comment procedures.

In addition, this rule is immediately effective upon publication in accordance with 5 U.S.C. 553(d)(1) because it is a substantive rule granting or recognizing an exemption or relieving a restriction. Specifically, the rule

relieves licensees from the requirement to report initial source inventories and source transactions for entry into the National Source Tracking System by the dates for compliance specified in the final rule.

IV. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR part 20 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), § 20.2207 in the final rule on National Source Tracking is classified as Compatibility Category "B." The NRC program elements in this category are those that apply to activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of NRC. Agreement State and NRC licensees would report their transactions to the National Source Tracking System. The data base would be maintained by NRC. The Agreement States are expected to adopt legally binding requirements on their licensees such that all licensees, both NRC and Agreement States, will begin reporting at the same time.

VI. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is revising the compliance dates for licensees to begin reporting information on source transactions and initial source inventories of nationally tracked sources to the National Source Tracking System. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VII. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VIII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0014, 3150–0001, and 3150–0202.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because it relieves restrictions and does not impose any regulatory burdens on licensees.

X. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

XI. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of Office of Management and Budget.

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 2. Section 20.2207 is amended by revising paragraph (h) to read as follows:

§ 20.2207 Reports of transactions involving nationally tracked sources.

* * * * *

(h) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by January 31, 2009. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted by using any of the methods identified by paragraph (f)(1) through (f)(4) of this section. The initial inventory report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(4) The radioactive material in the sealed source;

(5) The initial or current source strength in becquerels (curies); and

(6) The date for which the source strength is reported.

Dated at Rockville, Maryland, this 3rd day of October, 2007.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. E7–20591 Filed 10–18–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 070817469–7596–01]

RIN 0694–AE11

Approved End-Users and Respective Eligible Items for the People's Republic of China (PRC) Under Authorization Validated End-User (VEU)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to list names of end-users in the People's Republic of China (PRC) approved to receive exports, reexports and transfers of certain items under Authorization Validated End-User (VEU). In a final rule published in the **Federal Register**, BIS revised and clarified U.S. export control policy for the PRC, establishing Authorization VEU and identifying the PRC as the initial eligible destination. This rule identifies five specific validated end-users.

DATES: This rule is effective November 19, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE11 (VEU), by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include "RIN 0694–AE11 (VEU)" in the subject line of the message.

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

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE11 (VEU).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE11 (VEU))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Chairman, End-User Review Committee, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; by telephone (202) 482–6105; or by e-mail to *mrithmir@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): Initial List of Approved End-Users, Eligible Items and Destinations

Consistent with U.S. Government policy to facilitate trade for civilian end-uses in the PRC, BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for "validated end-users" (VEUs) located in eligible destinations to which eligible items (commodities, software and technology, except those controlled for missile technology or crime control reasons) may be exported, reexported or transferred without a license, in conformance with Section 748.15 of the EAR. As established in the June 19 rule, the PRC is the initial destination eligible for exports, reexports and transfers under Authorization VEU.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in the PRC that have a record of using such items responsibly. VEUs will be able to obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for Authorization VEU. In addition, Authorization VEU may be used by foreign reexporters, and does not have an expiration date.

This final rule amends Supplement No. 7 to Part 748 of the EAR to identify five companies with 14 eligible facilities in the PRC as VEUs and to identify the items that may be exported, reexported, or transferred to them. The VEUs listed in Supplement No. 7 to Part 748 were reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR.

Approving these five end-users as VEUs is expected to facilitate exports to civilian end-users in the PRC. After analyzing historical licensing data, BIS anticipates that approval of these five companies as VEUs should significantly reduce the value of trade that requires a license for export or reexport to the PRC. Approximately $54 million of items described as "eligible items" in this notice were licensed for export to these five end-users in 2006. This $54 million represents about 18% of all licensed exports to the PRC in 2006. Approval of these companies as VEUs also represents a significant savings of time for suppliers and end-users. Authorization VEU will eliminate the burden on exporters and reexporters of preparing license applications and on BIS for processing such applications, as exports and reexports will be made without licenses. This savings will enable exporters and reexporters to supply the VEUs much more quickly, thus enhancing the competitiveness of the exporters, reexporters, and end-users in the PRC.

To ensure appropriate facilitation of exports and reexports, on-site reviews of the VEUs may be warranted pursuant to paragraph 748.15(a)(2) and Section 7(iv) of Supplement No. 8 to Part 748 of the EAR. If such reviews are warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp, p. 783 (2002)), as extended most recently by the Notice of August 15, 2007 (72 FR 46137, August 16, 2007), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694–0088, "Multi-Purpose Application", which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries an estimated burden of 30

minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not expected to increase significantly as a result of this rule.

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

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Supplement No. 7 to Part 748 is added to read as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer, and Eligible Destinations

Validated End-User	Eligible Items (By ECCN)	Eligible Destination
Applied Materials China, Ltd	2B230; 2B350.g.3; 3B001.b.1; 3B001.c.2; 3B001.e; 3B001.f.2; 3C001; 3C002.	Applied Materials China, Ltd.—Shanghai Depot c/o Shanghai Applied Materials Technical Service Center, 368 Zhang Jiang Road, Pudong Zhangjiang Hi-Tech Park, Shanghai, China 201203. Applied Materials China, Ltd.—Beijing Depot c/o Beijing Applied Materials Technical Service Center, Bldg. 9, Area A, No. 1 North Di Sheng Street, BDA, Beijing, China 100176. Applied Materials China, Ltd.—Wuxi Depot c/o Sinotrans Jiangsu Group Fuchang Co., J5 A-B Wuxi Export Processing Zone 287 Gaolang Road, Wuxi New District, Wuxi Jiangsu China 214028.
BHA Aerocomposite Parts Co., Ltd	1A002.a; 1B001.f; 1C010.b; 1C010.e; 1D001 (limited to "software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 1B001.f); 1E001 (limited to "technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A002.a, 1B001.f, 1C010.b & .e, and 2B001.a); 2B001.e.1.a; 2D001 (limited to "software," other than that controlled by 2D002, specially designed or modified for the "development", "production" or "use" of equipment controlled by 2B001.e.1.a); 2D002 (limited to "software" for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a "numerical control" unit, capable of coordinating simultaneously more than 4 axes for "contouring control" controlled by 2B001.e.1.a).	BHA Aerocomposite Parts Co., Ltd., No. 4–388 Heibei Road, Tanggu Tianjin, China.
National Semiconductor Corporation	3A001.a.5.a.1; 3A001.a.5.a.2; 3A001.a.5.a.3; 3A001.a.5.a.4.	National Semiconductor Hong Kong Limited, Beijing Representative Office, Room 604, CN Resources Building, No. 8 Jianggumenbei A, Beijing, China 100005. National Semiconductor Hong Kong Limited, Shanghai Representative Office, Room 903–905 Central Plaza, No. 227 Huangpi Road, North Shanghai, China 200003.

Validated End-User	Eligible Items (By ECCN)	Eligible Destination
		National Semiconductor Hong Kong Limited, Shenzhen Representative Office, Room 1709 Di Wang Commercial Centre, Shung Hing Square, 5002 Shenna Road East, Shenzhen, China 518008.
Semiconductor Manufacturing International Corporation.	1C350.c.3; 1C350.d.7; 2B006.b.1; 2B230; 2B350.d.2; 2B350.g.3; 2B350.i.4; 3B001.a; 3B001.b; 3B001.c; 3B001.d; 3B001.e; 3B001.f; 3C001; 3C002; 3C004; 5B002; 5E002 (limited to "technology" according to the General Technology Note for the "production" of integrated circuits controlled by ECCN 5A002 that has been successfully reviewed under the encryption review process specified in §§ 740.17.b.2 or 740.17.b.3 and 742.15 of the EAR).	Semiconductor Manufacturing International (Shanghai) Corporation, 18 Zhang Jiang Rd., Pudong New Area, Shanghai, China 201203. Semiconductor Manufacturing International (Tianjin) Corporation, 19 Xing Hua Avenue, Xi Qing Economic Development Area, Tianjin, China 300385. Semiconductor Manufacturing International (Beijing) Corporation, No. 18 Wen Chang Road, Beijing Economic-Technological Development Area, Beijing, China 100176. Semiconductor Manufacturing International (Chengdu) Corporation, Assembly and Testing (AT2) Facility, 8–8 Kexin Road, Export Processing Zone (West Area), Chengdu, China 611731. Cenşion Semiconductor Manufacturing Corporation, 3/F, 8–1 Kexin Road, Export Processing Zone (West Area), Chengdu, China 611731.
Shanghai Hua Hong NEC Electronics Company, Ltd.	1C350.c.3; 1C350.d.7; 2B230; 2B350.d.2 2B350.g.3 2B350.i.4; 3B001.c.2; 3C002; 3C004.	Headquarters and Fab. 1 of HHNEC, No. 1188 Chuan Qiao Rd., Pu Dong, Shanghai, China 201206. Fab. 2 of HHNEC, No. 668 Guo Shou Jing Rd., Zhang Jiang High Tech Park, Pu Dong, Shanghai, China 201203.

Dated: October 16, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–20642 Filed 10–18–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

[CBP Dec. 07–82]

Technical Corrections Regarding the Organizational Structure of U.S. Customs and Border Protection

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect changes in the organizational structure of CBP resulting from the establishment of the new Office of International Trade, as well as the nomenclature changes effected by the transfer in 2003 of CBP to the Department of Homeland Security, and the subsequent renaming of the U.S. Customs Service as CBP.

DATES: October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Regulations and Rulings, Office of International Trade, (202) 572–8752, or Michelle Garcia, Regulations and Rulings, Office of International Trade, (202) 572–8745.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Public Law 107–296, (the "HSA"), establishing the Department of Homeland Security ("DHS"). Pursuant to section 403(1) of the HSA (6 U.S.C. 203(1)), the United States Customs Service was transferred from the Department of the Treasury to DHS effective March 1, 2003. Under section 1502 of the HSA, the Customs Service was renamed as the "Bureau of Customs and Border Protection". Subsequently, on April 23, 2007, a notice was published in the **Federal Register** (72 FR 20131) informing the public that DHS had changed the name of the Bureau of Customs and Border Protection to "U.S. Customs and Border Protection" effective March 31, 2007.

The HSA reserved customs revenue functions to the Department of the Treasury. Treasury Department Order No. 100–16 delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

Section 402 of Title IV of the Security and Accountability for Every Port Act of 2006 ("SAFE Port Act"), Public Law 109–347, established a new Office of International Trade (OT) to be headed by an Assistant Commissioner within U.S. Customs and Border Protection (CBP). Section 402(d)(2)(A) and (B) of the SAFE Port Act specifically authorized the Commissioner of CBP to transfer the assets, functions, and personnel of the Office of Strategic Trade (OST) and the Office of Regulations and Rulings (ORR) to OT. Pursuant to his authority under section 402(d)(2)(C), the Commissioner authorized the transfer of certain assets, functions, or personnel within the Office of Field Operations (OFO) to the OT.

Prior to the establishment of OT on October 15, 2006, the functions of trade policy and program development were split among three offices within CBP: the Office of Strategic Trade, the Office of Regulations and Rulings, and the Office of Field Operations. The OT consolidates the trade policy, program development, and compliance measurement functions of CBP into one

office without creating dual reporting mechanisms or overlapping and redundant management structures.

The OT includes all functions and staff from the former Office of Strategic Trade (OST) and the former Office of Regulations and Rulings (ORR), as well as designated national program managers and specialists, national analysis specialists from OFO Headquarters and the national account managers currently stationed at ports of entry.

The OT is responsible for the following functions:

(1) Providing national strategic direction to facilitate legitimate trade while protecting the American economy from unfair trade practices.

(2) Directing national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies participating in predatory trade practices.

(3) Coordinating with international partners to ensure effective enforcement of textile admissibility issues as well as the enforcement of free trade agreement eligibility.

(4) Cooperating with other U.S. agencies and like-minded foreign governments to achieve effective enforcement of intellectual property rights.

(5) Maintaining effective internal controls over the revenue process.

(6) Coordinating with other government agencies and international partners to identify risks to detect and prevent contaminated agricultural or food products from harming the American public or the nation's economy.

(7) Promoting trade facilitation and partnership with the importing community and trade associations by streamlining the flow of legitimate shipments and fostering corporate self-governance as a means of achieving compliance with trade laws and regulations.

(8) Managing a risk-based audit program to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations.

(9) Providing legal tools to promote facilitation and compliance with customs, trade and border security requirements through: the issuance of all CBP regulations, legally binding rulings and decisions, informed compliance publications and structured programs for external CBP training and outreach on international trade laws and CBP regulations.

This document sets forth amendments to the CBP regulations (19 CFR chapter I) to reflect the new CBP organizational structure resulting from the creation of the Office of International Trade, as well as the transfer of the former U.S. Customs Service to DHS and the subsequent renaming of the Customs Service to CBP.

The amendments set forth in this document include the removal of certain provisions within part 171 of the CBP regulations (specifically, paragraphs (b) and (c) of § 171.62 and § 171.63) relating principally to the role of the Department of the Treasury in the consideration of supplemental petitions for relief from fines, penalties, and forfeitures. These provisions are no longer necessary or appropriate due to the transfer of CBP to DHS, the delegation of authority over certain customs revenue functions from the Department of the Treasury to the DHS, and the delegation of certain authorities from DHS to CBP as set forth in Delegation Number 7010.3 dated May 11, 2006.

The CBP regulations contain a significant number of references to offices that either no longer exist or have a different functional context. The changes set forth in this document to correct these references are non-substantive and relate to internal agency organization matters.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document merely conform to the Homeland Security Act of 2002 and section 402 of the SAFE Port Act, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). In addition, these amendments concern matters relating to agency organization and personnel which are not subject to prior notice and comment procedures pursuant to 5 U.S.C. 553(a)(2) and (b)(A). For these same reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects in 19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

Amendments to CBP Regulations

■ For the reasons given above and under the authority of 19 U.S.C. 66 and 1624, chapter I of the CBP Regulations (19 CFR chapter I) is amended as follows:

CHAPTER I—[AMENDED]

■ 1. For each section indicated in the "Section" column, remove the words indicated in the "Remove" column from wherever they appear in the section, and add, in their place, the words indicated in the "Add" column.

Section	Remove	Add
1. 4.14(c)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
2. 4.14(c)	Customs Form 301	CBP Form 301
3. 4.14(c)	Customs Headquarters	CBP Headquarters
4. 4.14(c)	Customs	CBP
5. 4.14(f)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
6. 4.14(f)	Customs Headquarters	CBP Headquarters
7. 4.14(f)	Customs Office of Investigations	U.S. Immigration and Customs Enforcement
8. 4.14(f)	Customs	CBP

Section	Remove	Add
9. 4.14(i)(1)	Customs	CBP
10. 4.14(i)(1)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
11. 4.14(i)(1)	Customs Headquarters	CBP Headquarters
12. 4.80a(d)	U.S. Customs Service	U.S. Customs and Border Protection
13. 4.80a(d)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
14. 4.80a(d)	Customs Regulations	CBP Regulations
15. 4.80b(b)	United States Customs Service	U.S. Customs and Border Protection
16. 4.80b(b)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
17. 10.37	Customs territory	customs territory
18. 10.37	Customs Form	CBP Form
19. 10.37	Commercial Rulings Division, Customs Headquarters	Commercial and Trade Facilitation Division, Office of International Trade, CBP Headquarters
20. 10.37	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, Office of International Trade, CBP Headquarters
21. 10.236(b)—introductory text	Customs	CBP
22. 10.236(b)(1)	Customs Form 450	CBP Form 450
23. 10.236(b)(1)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
24. 10.256(b)(1)	Customs Form 449	CBP Form 449
25. 10.256(b)(1)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
26. 10.311(a)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
27. 10.311(a)	Customs Form 355	CBP Form 355
28. 10.311(b)	Regulatory Audit Division	Office of International Trade, Regulatory Audit
29. 10.311(b)	Customs Form 356	CBP Form 356
30. 10.311(b)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
31. 10.311(c)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
32. 10.311(c)	Customs Form 357	CBP Form 357
33. 12.39(b)(4)	Commercial Enforcement, Trade Compliance Division, at Customs Headquarters	Executive Director, Commercial Targeting and Enforcement, Office of International Trade, at CBP Headquarters
34. 12.39(e)(1)	Customs	CBP
35. 12.39(e)(1)	International Trade Compliance Division, U.S. Customs Service	Border Security and Trade Compliance Division, Office of International Trade, U.S. Customs and Border Protection
36. 19.4—heading	Customs and proprietor responsibility and supervision over warehouses	CBP and proprietor responsibility and supervision over warehouses
37. 19.4(b)(8)(iii)	Customs approval	CBP approval
38. 19.4(b)(8)(iii)	Customs Headquarters, Office of Regulations and Rulings	CBP Headquarters, Regulations and Rulings, Office of International Trade
39. 111.1	Office of Field Operations, United States Customs Service	Office of International Trade, U.S. Customs and Border Protection
40. 111.1	prepared and filed with Customs using	prepared and filed with CBP using
41. 111.1	activities involving transactions with Customs	activities involving transactions with CBP
42. 111.1	charges assessed or collected by Customs	charges assessed or collected by CBP
43. 111.1	documents intended to be filed with Customs	documents intended to be filed with CBP
44. 111.1	data received for transmission to Customs	data received for transmission to CBP
45. 111.1	factors which Customs will consider include	factors which CBP will consider include
46. 111.1	maintenance of current editions of the Customs Regulations	maintenance of current editions of CBP Regulations
47. 111.1	Custom issuances	CBP issuances
48. 111.1	Treasury Department	Department of Homeland Security
49. 111.1	U.S. Department of the Treasury	U.S. Department of Homeland Security
50. 111.5(a)	Treasury Department	Department of Homeland Security
51. 111.5(b)	Treasury Department	Department of Homeland Security
52. 111.13(f)	Trade Programs, Office of Field Operations, U.S. Customs Service	Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection
53. 111.13(f)	Customs	CBP
54. 111.13(f)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
55. 111.17(b)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,

Section	Remove	Add
56. 111.17(c)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
57. 111.19(d)(2)	Customs	CBP
58. 111.19(d)(2)	Office of Field Operations	Office of International Trade
59. 111.19(d)(2)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
60. 111.19(e)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
61. 111.19(f)—introductory text	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
62. 111.23(b)(2)—introductory text	Director, Regulatory Audit Division, U.S. Customs Service, 909 SE. First Avenue, Miami, Florida 33131	Office of International Trade, Regulatory Audit, 2001 Cross Beam Dr., Charlotte, North Carolina 28217
63. 111.23(b)(2)(iii)	Director, Regulatory Audit Division, in Miami	Office of International Trade, Regulatory Audit, in Charlotte
64. 111.24	Regulatory Audit Division	Office of International Trade, Regulatory Audit
65. 111.25	Customs	CBP
66. 111.26	Treasury Department	Department of Homeland Security
67. 111.27	Regulatory Audit Division	Regulatory Audit
68. 111.29(b)(1)	Customs charges	customs charges
69. 111.29(b)(1)	Customs	CBP
70. 111.29(b)(1)	U.S. Customs Service	U.S. Customs and Border Protection
71. 111.30(c)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
72. 111.31(a)	Treasury Department	Department of Homeland Security
73. 111.31(b)	Treasury Department	Department of Homeland Security
74. 111.32	Treasury Department	Department of Homeland Security
75. 111.34—heading	Undue influence upon Treasury Department employees	Undue influence upon Department of Homeland Security employees
76. 111.34	Treasury Department	Department of Homeland Security
77. 111.38	Treasury Department	Department of Homeland Security
78. 111.51(a)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
79. 111.66	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
80. 111.69	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
81. 111.70	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
82. 111.71	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
83. 111.72	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
84. 111.74	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
85. 111.75	Secretary of the Treasury	Secretary of Homeland Security. or his designee,
86. 111.76(b)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
87. 111.77	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
88. 111.81	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
89. 113.14	International Trade Compliance Division	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade
90. 113.15	International Trade Compliance Division	Border Security and Trade Compliance Division
91. 113.38(c)(1)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
92. 113.38(c)(4)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
93. 113.38(c)(4)	Customs officer	CBP officer
94. 113.38(c)(4)—(except for last sentence)	Customs	CBP
95. 113.39(a)—introductory text	International Trade Compliance Division	Border Security and Trade Compliance Division
96. 113.39(b)	International Trade Compliance Division	Border Security and Trade Compliance Division
97. 133.0	United States Customs Service	U.S. Customs and Border Protection
98. 133.1(a)	U.S. Customs Service	U.S. Customs and Border Protection

Section	Remove	Add
99. 133.2—introductory text	Intellectual Property Rights Branch, U.S. Customs Service	Intellectual Property Rights (IPR) & Restricted Merchandise Branch, U.S. Customs and Border Protection
100. 133.2(e)—introductory text	Customs	CBP
101. 133.2(f)	Customs will publish	CBP will publish
102. 133.2(f)	Customs will examine	CBP will examine
103. 133.2(f)	until Customs has made	until CBP has made
104. 133.2(f)	Customs will publish	CBP will publish
105. 133.4(a)	United States Customs Service	U.S. Customs and Border Protection
106. 133.4(a)	Customs officers	U.S. Customs and Border Protection Officers
107. 133.4(c)	United States Customs Service	U.S. Customs and Border Protection
108. 133.6—introductory text	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch, CBP Headquarters
109. 133.6(b)	United States Customs Service	U.S. Customs and Border Protection
110. 133.7(a)—introductory text	Customs	CBP
111. 133.7(a)—introductory text	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
112. 133.7(a)(3)	United States Customs Service	U.S. Customs and Border Protection
113. 133.7(b)	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
114. 133.12—introductory text	Intellectual Property Rights Branch, U.S. Customs Service	IPR & Restricted Merchandise Branch
115. 133.13(b)	United States Customs Service	U.S. Customs and Border Protection
116. 133.15—heading	Term of Customs trade name recordation	Term of CBP trade name recordation
117. 133.15	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
118. 133.26	Customs custody	CBP custody
119. 133.26	Customs Form	CBP Form
120. 133.32—introductory text	Customs protection	customs protection
121. 133.32—introductory text	Intellectual Property Rights Branch, U.S. Customs Service	IPR & Restricted Merchandise Branch, U.S. Customs and Border Protection
122. 133.35(a)	United States Customs Service	CBP
123. 133.35(a)	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
124. 133.35(b)(2)	United States Customs Service	U.S. Customs and Border Protection
125. 133.36—introductory text	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
126. 133.36(b)	United States Customs Service	CBP
127. 133.36(b)	made payable to the United States Customs Service	made payable to U.S. Customs and Border Protection
128. 133.37(b)	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
129. 133.37(c)(3)	United States Customs Service	U.S. Customs and Border Protection
130. 133.43(d)(1)(ii)	Customs Headquarters	CBP Headquarters
131. 133.43(d)(1)(ii)	International Trade Compliance Division, Office of Regulations and Rulings	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade
132. 142.3a	Customs	CBP
133. 142.3a(d)	port director	Assistant Commissioner, Office of International Trade, or his designee
134. 142.3a(e)	port director	Assistant Commissioner, Office of International Trade, or his designee
135. 143.7(a)	Director, Trade Compliance	Executive Director, Trade Policy and Programs, Office of International Trade
136. 143.8	Director, Trade Compliance	Executive Director, Trade Policy and Programs, Office of International Trade
137. 143.8	Customs officer	CBP officer
138. 146.81(b)	Director, International Trade Compliance Division	Assistant Commissioner, Office of International Trade, or his designee
139. 146.83(a)	Director, International Trade Compliance Division	Executive Director, Regulations and Rulings, Office of International Trade
140. 146.83(a)	Customs	CBP
141. 151.12—introductory text	Customs	CBP
142. 151.12(a)	Office of Field Operations, U.S. Customs Service	Office of Information and Technology, or his designee, U.S. Customs and Border Protection
143. 151.12(a)	Customs	CBP
144. 151.12(a)	U.S. Customs Laboratory Methods Manual	Customs and Border Protection Laboratory (CBPL) Methods
145. 151.12(a)	U.S. Customs Service	U.S. Customs and Border Protection
146. 151.12(a)	Customs Internet Web site: *http://www.customs.gov.*	CBP Web site: www.cbp.gov.
147. 159.63(a)	Customs	CBP
148. 159.63(a)	Office of Regulations and Rulings	Office of Finance
149. 162.74(c)	Customs Headquarters, Office of Regulations and Rulings	Office of International Trade
150. 162.74(c)	Customs	CBP
151. 162.74(c)	Customs Headquarters	CBP Headquarters

	Section	Remove	Add
152.	163.5(b)(1)	Director, Regulatory Audit Division, U.S. Customs Service, 909 SE. First Avenue, Miami, Florida 33131	Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217
153.	163.5(b)(1)	Director of the Miami regulatory audit field office	Director of Regulatory Audit, Charlotte office
154.	163.5(b)(1)	Customs	CBP
155.	163.11(a)(5)	Director, Regulatory Audit Division at Customs Headquarters	Executive Director, Regulatory Audit, Office of International Trade, at CBP Headquarters
156.	163.11(b)	Customs	CBP
157.	163.11(b)	Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229
158.	163.12(b)(2)	Director, Regulatory Audit Division, U.S. Customs Service, 909 SE. First Avenue, Miami, Florida 33131	Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217
159.	163.12(b)(2)	Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 909 SE. First Avenue, Miami, Florida 33131	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW., Washington, DC 20229
160.	163.12(c)(1)	Miami regulatory audit field office	Charlotte regulatory audit field office
161.	163.12(c)(1)	Customs	CBP
162.	163.13(d)(1)	Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229
163.	163.13(d)(1)	Director, Regulatory Audit Division	Executive Director, Regulatory Audit
164.	163.13(d)(2)	Customs	CBP
165.	163.13(d)(2)	Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229	Executive Director, Regulatory Audit, U.S. Customs and Border Protection, Office of International Trade, Washington, DC 20229
166.	163.13(d)(2)	Director, Regulatory Audit Division	Executive Director, Regulatory Audit
167.	171.12—heading	Petitions acted on at Customs Headquarters	Petitions acted on at CBP Headquarters
168.	171.12	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
169.	171.14	Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters	Director, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters, or his designee
170.	171.14	Customs	CBP
171.	171.62(a)	Office of Regulations and Rulings	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade
172.	171.62(b)—heading	Decisions of Customs Headquarters	Decisions of CBP Headquarters
173.	171.62(b)	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
174.	171.62(b)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
175.	Part 171, App. C, XIII	Brokers Compliance Branch, Office of Trade Compliance	Trade Policy and Programs, Office of International Trade
176.	172.14	International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters
177.	172.14	Customs	CBP
178.	172.42(b)—heading	Decisions of Customs Headquarters	Decisions of CBP Headquarters
179.	172.42(b)	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
180.	172.42(b)	International Trade Compliance Division	Border Security and Trade Compliance Division, Regulations and Rulings
181.	172.42(c)—heading	Authority of Assistant Commissioner	Authority of Executive Director
182.	172.42(c)	Assistant Commissioner, Office of Regulations and Rulings, or his designee	Executive Director, Regulations and Rulings, Office of International Trade, or his designee
183.	177.0	United States Customs Service	CBP
184.	177.0	any Customs Service field office	any CBP field office
185.	177.0	Customs Headquarters Office other than the Office of Regulations and Rulings	CBP Headquarters Office other than Regulations and Rulings, Office of International Trade
186.	177.1(d)(6)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
187.	177.1(d)(6)	United States Customs Service	U.S. Customs and Border Protection
188.	177.2(a)	Commissioner of Customs	Commissioner of Customs and Border Protection

	Section	Remove	Add
189.	177.2(a)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
190.	177.2(a)	National Commodity Specialist Division, U.S. Customs	National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, New York, New York, 10119
191.	177.2(a)	Customs Service	Customs and Border Protection
192.	177.2(b)(2)(i)	relevant Customs and related laws	relevant customs and related laws
193.	177.2(b)(2)(ii)(C)	Commercial Rulings Division, U.S. Customs Service	Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection
194.	177.9(c)	Customs	CBP
195.	177.9(c)	Commissioner of Customs	Commissioner of Customs and Border Protection
196.	177.9(c)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
197.	177.13(b)(1)	Office of Regulations and Rulings, U.S. Customs Service	Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection
198.	177.22(b)—introductory text	Commercial Rulings Division	Commercial and Trade Facilitation Division, Regulations and Rulings
199.	177.22(b)—introductory text	U.S. Customs Service	U.S. Customs and Border Protection
200.	177.22(b)—introductory text	Customs	CBP
201.	177.22(b)(3)	Customs	CBP
202.	177.22(c)	Assistant Commissioner, Office of Regulations and Rulings	Executive Director, Regulations and Rulings, Office of International Trade
203.	177.22(c)	U.S. Customs Service	U.S. Customs and Border Protection
204.	177.26	Director, Office of Regulations and Rulings	Executive Director, Regulations and Rulings, Office of International Trade
205.	177.26	U.S. Customs Service	U.S. Customs and Border Protection
206.	181.22(b)(1)	Customs	CBP
207.	181.92(a)(3)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
208.	181.92(a)(3)	United States Customs Service	U. S. Customs and Border Protection
209.	181.92(a)(6)	National Commodity Specialist Division, United States Customs Service	National Commodity Specialist Division, U.S. Customs and Border Protection
210.	181.93(a)	Commissioner of Customs	Commissioner of Customs and Border Protection
211.	181.93(a)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
212.	181.93(a)	United States Customs Service, 6 World Trade Center, New York, NY 10048	U. S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119
213.	181.100(a)(3)	Commissioner of Customs	Commissioner of Customs and Border Protection
214.	181.100(a)(3)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
215.	181.102(a)(1)—introductory text	Customs Headquarters	CBP Headquarters
216.	181.102(a)(1)—introductory text	Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service	Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection
217.	191.7(c)—heading	Review and action by Customs	Review and action by CBP
218.	191.7(c)(3)	Customs Headquarters	CBP Headquarters
219.	191.7(c)(3)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
220.	191.8(d)	Customs Headquarters	CBP Headquarters
221.	191.8(d)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
222.	191.8(e)—heading	Review and action by Customs	Review and action by CBP
223.	191.8(e)—introductory text	Customs Headquarters	CBP Headquarters
224.	191.8(e)(2)	Customs Headquarters	CBP Headquarters
225.	191.8(e)(2)	Commercial Rulings Division	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
226.	191.8(g)(1)	Customs Headquarters	CBP Headquarters
227.	191.8(g)(1)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
228.	191.8(g)(2)(ii)	Customs Headquarters	CBP Headquarters

Section	Remove	Add
229. 191.8(g)(2)(ii)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
230. 191.11(c)	Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs Headquarters	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters
231. 191.32(c)(1)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
232. 191.36(d)	Customs	CBP
233. 191.36(d)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
234. 191.36(d)	Customs Headquarters	CBP Headquarters
235. 191.61(d)(1)	Customs Headquarters	CBP Headquarters
236. 191.61(d)(1)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
237. 191.61(d)(2)	Customs Headquarters	CBP Headquarters
238. 191.61(d)(2)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
239. 191.61(d)(3)—heading	Customs Headquarters	CBP Headquarters
240. 191.61(d)(3)	Customs Headquarters	CBP Headquarters
241. 191.91(g)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
242. 191.91(g)	Customs Headquarters	CBP Headquarters
243. 191.92(h)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
244. 191.92(h)	Customs Headquarters	CBP Headquarters
245. 191.156(d)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
246. 191.194(a)(1)	Customs Headquarters	CBP Headquarters
247. 191.194(a)(1)	Customs processing	CBP processing
248. 191.194(a)(2)—introductory text	Customs review	CBP review
249. 191.194(a)(2)—introductory text	Customs	CBP
250. 191.194(a)(2)(i)	Customs charges	customs charges
251. 191.194(a)(2)(i)	Customs	CBP
252. 191.194(c)	Customs	CBP
253. 191.194(d)	Customs	CBP
254. 191.194(e)(1)(ii)	Customs laws and regulations	customs laws and CBP regulations
255. 191.194(e)(2)	Customs	CBP
256. 191.194(f)(1)	Customs Headquarters, Office of Field Operations, Office of Trade Programs	CBP Headquarters, Trade Policy and Programs, Office of International Trade
257. 191.194(f)(1)	Customs Headquarters	CBP Headquarters
258. 191.194(f)(2)	Customs Headquarters, Office of Field Operations, Office of Trade Programs	CBP Headquarters, Trade Policy and Programs, Office of International Trade
259. 191.194(f)(2)	Customs	CBP
260. Part 191, App. A, II, K	Customs Regulations	CBP Regulations
261. Part 191, App. A, II, M, 6	Customs Regulations	CBP Regulations
262. Part 191, App. A, III, D, 6	Customs Regulations	CBP Regulations
263. Part 191, App. A, IV, I	Customs Regulations	CBP Regulations
264. Part 191, App. A, IV, K, 6	Customs Regulations	CBP Regulations
265. Part 191, App. A, V, I	Customs Regulations	CBP Regulations
266. Part 191, App. A, V, K, 6	Customs Regulations	CBP Regulations
267. Part 191, App. A, VI, I	Customs Regulations	CBP Regulations
268. Part 191, App. A, VI, K, 6	Customs Regulations	CBP Regulations
269. Part 191, App. A, VII, I	Customs Regulations	CBP Regulations
270. Part 191, App. A, VII, K, 6	Customs Regulations	CBP Regulations
271. Part 191, App. A, VIII, H	Customs Regulations	CBP Regulations
272. Part 191, App. A, VIII, J, 6	Customs Regulations	CBP Regulations
273. Part 191, App. A, IX, M, 6	Customs Regulations	CBP Regulations
274. Part 191, App. A, X, J	Customs Regulations	CBP Regulations
275. Part 191, App. A, X, L, 6	Customs Regulations	CBP Regulations
276. Part 191, App. A, XI, Y, 6	Customs Regulations	CBP Regulations
277. Part 191, App. A, XII, J	Customs Regulations	CBP Regulations
278. Part 191, App. A, XII, L, 6	Customs Regulations	CBP Regulations
279. Part 191, App. A, XIII, J	Customs Regulations	CBP Regulations
280. Part 191, App. A, XIII, L, 6	Customs Regulations	CBP Regulations
281. Part 191, App. A, XIV, I	Customs Regulations	CBP Regulations
282. Part 191, App. A, XIV, K, 6	Customs Regulations	CBP Regulations
283. Part 191, App. B, I	Customs Headquarters	CBP Headquarters
284. Part 191, App. B, I	Customs issues	CBP issues

Section	Remove	Add
285. Part 191, App. B, II COMPANY LETTERHEAD (Optional).	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade
286. Part 191, App. B, II COMPANY LETTERHEAD (Optional).	Customs Regulations	CBP Regulations
287. Part 191, App. B, II NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT.	Customs Regulations	CBP Regulations
288. Part 191, App. B, II PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS.	Customs Regulations	CBP Regulations
289. Part 191, App. B, II CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED—heading.	CUSTOMS OFFICE	CBP OFFICE
290. Part 191, App. B, II INVENTORY PROCEDURES.	Customs Regulations	CBP Regulations
291. Part 191, App. B, II BASIS OF CLAIM FOR DRAWBACK.	Customs Regulations	CBP Regulations
292. Part 191, App. B, II AGREEMENTS	Customs Regulations	CBP Regulations
293. Part 191, App. B, III COMPANY LETTERHEAD (Optional).	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
294. Part 191, App. B, III NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT.	Customs Regulations	CBP Regulations
295. Part 191, App. B, III PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS.	Customs Regulations	CBP Regulations
296. Part 191, App. B, III CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED—heading.	CUSTOMS OFFICE	CBP OFFICE
297. Part 191, App. B, IIII NVENTORY PROCEDURES.	Customs Regulations	CBP Regulations
298. Part 191, App. B, III BASIS OF CLAIM FOR DRAWBACK.	Customs Regulations	CBP Regulations
299. Part 191, App. B, III AGREEMENTS	Customs Regulations	CBP Regulations
300. Part 191, App. B, IV COMPANY LETTERHEAD (Optional).	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
301. Part 191, App. B, IV NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT.	Customs Regulations	CBP Regulations
302. Part 191, App. B, IV PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS.	Customs Regulations	CBP Regulations
303. Part 191, App. B, IV CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED Heading.	CUSTOMS OFFICE	CBP OFFICE
304. Part 191, App. B, IV INVENTORY PROCEDURES.	Customs Regulations	CBP Regulations
305. Part 191, App. B, IV BASIS OF CLAIM FOR DRAWBACK.	Customs Regulations	CBP Regulations
306. Part 191, App. B, IV AGREEMENTS	Customs Regulations	CBP Regulations
307. Part 191, App. B, V COMPANY LETTERHEAD (Optional).	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
308. Part 191, App. B, V NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT.	Customs Regulations	CBP Regulations
309. Part 191, App. B, V PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS.	Customs Regulations	CBP Regulations
310. Part 191, App. B, V CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED—heading.	CUSTOMS OFFICE	CBP OFFICE
311. Part 191, App. B, V INVENTORY PROCEDURES.	Customs Regulations	CBP Regulations
312. Part 191, App. B, V BASIS OF CLAIM FOR DRAWBACK.	Customs Regulations	CBP Regulations
313. Part 191, App. B, V AGREEMENTS	Customs Regulations	CBP Regulations

PART 171—FINES, PENALTIES, AND FORFEITURES

■ 2. The authority citation for part 171, CBP Regulations, continues to read as follows:

Authority: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. A. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

* * * * *

§ 171.62 [Amended]

■ 3. Section 171.62 is amended by removing paragraphs (c) and (d).

§ 171.63 [Removed and reserved]

■ 4. Section 171.63 is removed and reserved.

Dated: October 12, 2007.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. E7–20471 Filed 10–18–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 2007N–0328]

Medical Devices; General Hospital and Personal Use Devices; Classification of Remote Medication Management System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the remote medication management systems into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled, "Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Remote Medication Management System," which will serve as the special control for this device type. The agency is classifying this device type into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of these devices.

DATES: This final rule is effective November 19, 2007. The classification was effective June 13, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Chapman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–2585.

SUPPLEMENTARY INFORMATION:

I. What is the Background of This Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device type. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on September 20, 2006, classifying the INRange Remote Medication Management System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On September 25, 2006, INRange Systems, Inc., submitted a petition requesting classification of the INRange Remote Medication Management System under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that remote medication management systems can be classified into class II with the establishment of special controls. FDA believes that these special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of the device. The device is assigned the generic name "Remote Medication Management System." A remote medication management system is a device composed of clinical and communications software, a medication delivery unit, and medication packaging. The system is intended to store the patient's prescribed medications in a delivery unit, to permit a health care professional to remotely schedule the patient's prescribed medications, to notify the patient when the prescribed medications are due to be taken, to release the prescribed medications to a tray of the delivery unit accessible to the patient on the patient's command, and to record a history of the event for the health care professional. The system is intended for use as an aid to health care professionals in managing therapeutic regimens for patients in the home or clinic.

FDA has identified the following risks to health associated with this type of device:

- Improper dosage delivered to patient,
- Cross-contamination of medications—unintended drug interactions,
- Compromised information security,
- Failure of the device—inability to deliver medication,
- Electromagnetic interference—electromagnetic emissions interfering with other medical devices or electromagnetic susceptibility causing the device to function improperly due to emissions of other devices, and
- Electrical and mechanical hazards—electrical shock, pinching.

FDA believes that the class II special controls guidance document will aid in mitigating the potential risks to health as described in table 1 of this document.

TABLE 1.—RISKS TO HEALTH AND MITIGATION MEASURES

Identified Risk	Recommended Mitigation Measures
Improper dosage delivered to patient	Software validation Simulated use testing Labeling
Cross-contamination of medications	Simulated use testing
Compromised information security	Software validation Simulated use testing
Failure of the device	Software validation Simulated use testing Labeling
Electromagnetic interference	Electromagnetic compatibility Labeling
Electrical and mechanical hazards	Electrical and mechanical safety testing Labeling

FDA believes that the special controls, in addition to general controls, address the risks to health identified previously and provide reasonable assurances of the safety and effectiveness of the device type. Thus, on June 13, 2007, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification at 21 CFR 880.6315.

Following the effective date of the final classification rule, manufacturers will need to address the issues covered in the special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the remote medication management system they intend to market.

II. What is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Thus, neither an environmental assessment nor an environmental impact statement is required.

III. What is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any 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 $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply With the Paperwork Reduction Act of 1995?

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required. Elsewhere in this issue of the **Federal Register**, FDA is issuing a notice announcing the guidance for the final rule. This guidance, "Class II Special Controls Guidance Document: Remote Medication Management System," references previously approved collections of information found in FDA regulations.

VI. What References Are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from INRange Systems, Inc., dated September 25, 2006.

List of Subjects in 21 CFR Part 880

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 880.6315 is added to subpart G to read as follows:

§ 880.6315 Remote Medication Management System.

(a) *Identification.* A remote medication management system is a device composed of clinical and communications software, a medication delivery unit, and medication packaging. The system is intended to store the patient's prescribed medications in a delivery unit, to permit a health care professional to remotely schedule the patient's prescribed medications, to notify the patient when the prescribed medications are due to be taken, to release the prescribed medications to a tray of the delivery unit accessible to the patient on the patient's command, and to record a history of the event for the health care professional. The system is intended for use as an aid to health care professionals in managing therapeutic regimens for patients in the home or clinic.

(b) *Classification.* Class II (special controls). The special control is: The FDA guidance document entitled "Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Remote Medication Management System." See § 880.1(e) for availability of this guidance document.

Dated: October 3, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–20633 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AB01

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule.

SUMMARY: As part of an ongoing effort to review and streamline its regulations, the Financial Management Service (FMS) has revised its regulation governing the Treasury Tax and Loan (TT&L) program. The changes update the rule to reflect the reorganization and enhancement of the TT&L program, including changes in terminology, and simplify the rule by deleting procedures and provisions that appear in other regulations or in the Treasury Financial Manual. FMS also has rewritten this regulation in plain language, thus making it clearer and easier to understand.

DATES: This interim final rule is effective October 19, 2007. Comments must be received by December 18, 2007.

ADDRESSES: The Financial Management Service began participating in the U.S. government's eRulemaking Initiative by publishing rulemaking information on *www.regulations.gov*. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2007–0007, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Thompson Sawyer, Director, Investment Management Division, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

Instructions: All submissions received must include the agency name ("Financial Management Service") and docket number FISCAL–FMS–2007–0007 for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Thompson Sawyer, Director, Investment Management Division, at (202) 874–7150 or *thompson.sawyer@fms.treas.gov* or Ellen M. Neubauer, Senior Attorney, at (202) 874–6680 or *ellen.neubauer@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

The Treasury Tax and Loan (TT&L) program encompasses two separate components: A depositary component through which we collect Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which we invest short-term operating balances not needed for immediate cash outlays. Examples of the investment component are retention of tax deposits, direct investments, term investments or other investment programs. Approximately 950 TT&L depositaries borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed pursuant to Part 203, participating depositaries borrow Treasury funds in the form of a note secured with collateral pledged to

Treasury and pay interest to Treasury on these balances.

We have revised Part 203 to reflect recent operational changes and changes in terminology to the TT&L program, and to streamline and simplify the regulation. Because the predominant intent of this rulemaking is to improve the clarity of the regulation, we have removed some procedural and technical requirements and provisions, such as references to specific Forms and filing instructions, from the existing regulation. All of the technical requirements that we have removed and that still apply are contained in Volume IV of the Treasury Financial Manual (see *http://www.fms.treas.gov/tfm/vol4/index.html*). Those technical requirements that don't still apply have been deleted. For example, current § 203.10 sets forth procedures for financial institutions to enroll taxpayers in the Electronic Federal Tax Payment System (EFTPS) that no longer accurately reflect the actual process. Accordingly, we have deleted the substance of current § 203.10 from the regulation. The current procedures for enrolling taxpayers in EFTPS are found in Volume IV of the Treasury Financial Manual, Part 1, Chapter 2200.

In addition, we have removed some of the existing provisions of the regulation because they duplicate provisions of 31 CFR part 210, which sets forth the rules governing the Federal government's participation in the Automated Clearing House (ACH) system. For example, the substance of current § 203.15 has been deleted from the interim final regulation because everything in current § 203.15 is covered in 31 CFR part 210 (see § 210.8(b)(1)). For the same reason, the substantive provisions of current § 203.12, which address ACH credit and debit transactions, have been deleted.

Although a number of new terms have been added to describe components of the TT&L program, most aspects of the operation of the program are not changing. For example, the new term "Treasury Investment Program (TIP)" is the automated system within the TT&L program that receives tax collection data, invests funds, and monitors collateral pledged to secure invested funds and public money. The new term "Paper Tax System (PATAX)" is the automated system within TIP that collects, adjusts, and reports paper Federal tax deposits (FTDs).

The revisions to this rule reflect changes that have been made to the TT&L program over recent years. One of the most significant changes requires depositaries to have collateral in place before any funds are credited to their TIP main account balance or Special Direct Investment (SDI) account balance. Previously, a depositary had until the end of the day to have collateral in place after the funds were credited to its account. This change helps ensure that Treasury investments are adequately secured at all times. Another change, reflected in § 203.20, is that with the implementation of the Treasury Investment Program, transactions now post to financial institutions' reserve accounts throughout the day.

Another change to the TT&L program occurred in 2001, when the Department of the Treasury announced that after December 31, 2000, Federal Reserve Banks (FRBs) would no longer accept FTD paper coupons. The change affected only a small percentage (less than one-half of one percent) of FTD deposits. It was no longer cost-effective for the FRBs to process the small number of FTD paper coupons they received annually. We have deleted § 203.18(b) of the current regulation to reflect this change. Financial institutions that are TT&L depositaries will still accept paper coupons. For those taxpayers who do not have an account with a TT&L depositary or who do not wish to pay taxes electronically through EFTPS, FMS has a mail-in option.

Other changes to the TT&L program and Part 203 are discussed in the section-by-section analysis below.

II. Section-by-Section Analysis

Section 203.1 Scope

Amended § 203.1 is substantively unchanged from current § 203.1, except that language has been added to clarify that there are various ways that a financial institution may participate in the TT&L program. A financial institution may choose to participate in the TT&L program by becoming an investor depositary, a retainer depositary, and/or a collector depositary, or by processing tax payments through EFTPS. Amended § 203.1 clarifies that a financial institution does not become a TT&L depositary, as defined, by processing tax payments through EFTPS.

Section 203.2 Definitions

We have made a number of changes to the definitions set forth at § 203.2. Several definitions have been deleted because they are not used in the interim final regulation. These include: "Direct Access transaction," "Electronic Tax Application," "Electronic Tax Application reference number," "Input Message Accountability Data," and "Transaction trace number." Other terms defined in the current regulation are replaced by new terminology in the interim final regulation, including "Federal Reserve account" (replaced by "Reserve account"), "Federal Reserve Bank of the district" (replaced by "Federal Reserve Bank (FRB)"), "Federal Tax Deposit system" (replaced by "Paper Tax System (PATAX)"), "Note option" (replaced by "Retainer depositary" and "Investor depositary"), and "Remittance option" (replaced by "Collector depositary"). Several new terms have been added to reflect enhancements to the TT&L program, including "Capacity," "Dynamic investment," "Investment program," "Special Direct Investment (SDI) account balance," "Term Investment Option (TIO) account balance," "Treasury Investment Program (TIP)," "Treasury Support Center (TSC)," and "TIP main account balance." A number of definitions have been reworded to make them easier to understand, but are substantively unchanged. Significant changes to specific definitions are discussed below.

Balance Limit

The new term "balance limit" is defined and replaces the term "maximum balance" in current Part 203. Although the term "maximum balance" is used in current Part 203, it is not defined.

Capacity

The new term "capacity" is being added to refer to the additional amount of a direct investment or special direct investment that a designated depositary is willing to receive or the additional amount of tax deposits that a designated depositary is willing to retain. The TIP main account balance or SDI account balance, current collateral value, pending withdrawals, and pending investments are considered when determining capacity.

Collector Depositary

The new term "collector depositary" is used to describe a depositary that uses the "remittance option" under current Part 203 to better reflect the activity performed by the depositary.

Dynamic Investment

The new term "dynamic investment" is used to describe investments placed throughout the day.

Federal Reserve Bank (FRB)

The new term "Federal Reserve Bank" replaces "Federal Reserve Bank of the district" in current Part 203.

Investment Program

The new term "investment program" is used to provide an all-inclusive name for the programs through which Treasury invests excess operating cash. Examples of the investment component are retention of tax deposits, direct investments, and term investments. Depositaries do not have to accept paper-based Federal Tax Deposit coupons (PATAX) to participate in the investment program.

Investor Depositary

The new term "investor depositary" is used to describe one of the two kinds of depositaries that are referred to as "note option" depositaries in the current regulation. An investor depositary is a depositary authorized to participate in the investment program. In the interim final regulation, the terms "investor depositary" and "retainer depositary" are specific terms that replace the less specific term "note option" in the current regulation.

Paper Tax System (PATAX)

The new term "PATAX" replaces the term "Federal Tax Deposit System" in current Part 203, to better reflect the activity performed by the system.

Reserve Account

The new term "Reserve account" replaces "Federal Reserve account" in current Part 203. The definition incorporates the concept that a financial institution's reserve account may in some cases be the reserve account of the financial institution's correspondent bank.

Retainer Depositary

The new term "retainer depositary" is used to describe a certain kind of depositary known as a "note option" depositary in the current regulation. A retainer depositary is a depositary that retains a portion of the Federal tax deposits it accepts. In the interim final regulation, the terms "investor depositary" and "retainer depositary" replace the less specific term "note option" in the current regulation. Retainer depositaries do not have to accept paper-based Federal Tax Deposit coupons (PATAX).

Same-Day Payment

The reference to direct access transactions in the current definition of "same-day payment" has been deleted in the amended definition because these transactions are no longer available. These transactions have been replaced by Fedwire® non-value transactions.

Special Direct Investment (SDI)

This definition has been changed to delete the reference to note account and to add a reference to Borrower-In-Custody (BIC) arrangements.

SDI Account Balance

The new term "SDI account balance" is being added because there is now a separate account for SDI funds. In the current regulation, SDI funds are allowed to be commingled with direct investment funds and retained tax deposits.

Term Investment Option (TIO) Account Balance

The new term "TIO account balance" is being added to replace "Term note balance."

Treasury Investment Program (TIP)

The new term "TIP" is being added to describe the automated system within the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure invested funds.

TIP Main Account Balance

The new term "TIP main account balance" is being added to distinguish retained tax deposits and direct investments funds from SDI funds.

Treasury Support Center (TSC)

The new term "TSC" is being added to refer to the centralized office located at an FRB that is responsible for monitoring collateral pledged and managing the TT&L program participation for designated depositaries.

Treasury Tax & Loan (TT&L) Depositary

The definition of "TT&L depositary" has been changed to reflect new terminology.

TT&L Program

The definition of "TT&L program" has been revised to add references to PATAX, TIP, and EFTPS.

Section 203.3 TT&L Depositaries

We have added a new § 203.3 to clarify the different kinds of TT&L depositaries and the circumstances in which a financial institution must be a TT&L depositary. A financial institution must be a TT&L depositary in order to participate in either PATAX or the investment program, but not in order to participate in EFTPS alone. There are three kinds of TT&L depositaries:

- Collector depositaries—depositaries that accept paper tax payments and may accept electronic tax payments, but that do not retain any such deposits in a TIP main account or accept direct or special direct investments. A collector depositary may accept term investments.
- Retainer depositaries—depositaries that accept electronic and/or paper tax payments and retain a portion of the tax deposits in a TIP main account balance but do not accept direct or special direct investments. A retainer depositary may accept term investments.
- Investor depositaries—depositaries that participate in the investment program by accepting direct investments, special direct investments, and dynamic investments. Investor depositaries may accept electronic and/or paper tax payments and may retain a portion of those tax deposits. An investor depositary may also accept term investments.

Section 203.4 Financial Institution Eligibility for Designation as a TT&L Depositary

Amended § 203.4 sets forth the criteria a financial institution must meet to be eligible for designation as a TT&L depositary. The criteria in the amended rule are unchanged from those in the current § 203.3.

Section 203.5 Designation of Financial Institutions as TT&L Depositaries

Amended § 203.5 sets forth the substance of current § 203.4 with certain changes. Subsection (a) is unchanged except that language contained in current § 203.6 which provides that Treasury will not compensate depositaries for servicing and maintaining a TT&L account, or for processing tax payments through EFTPS or P AT AX, has been relocated to § 203.5(a).

Amended § 203.5(b) simplifies the current regulation by deleting references to specific forms, which are set forth in procedural instructions.

Section 203.6 Obligations of TT&L Depositaries

We have not made any substantive change to the obligations of TT&L depositaries described in current § 203.5.

Section 203.7 Termination of Agreement or Change of Election or Option

We have not revised § 203.7 except for minor wording changes.

Section 203.8 Application of Part and Procedural Instructions

Amended § 203.8 is unchanged from current § 203.8 except that terminology has been updated.

Section 203.9 Scope of the Subpart

We have not made any substantive changes to § 203.9.

Section 203.10 Electronic Payment Methods

Amended § 203.10 sets forth the substance of current § 203.11. The second sentence of current § 203.11(a) is deleted because it restates the point made in amended § 203.9 that a financial institution need not be a TT&L depositary in order to process payments through EFTPS.

Section 203.11 Same-Day Reporting and Payment Mechanisms

Details regarding some of the requirements of Fedwire® value transactions which are set forth in current § 203.13(b) have been eliminated as unnecessary. References to direct access transactions set forth in current § 203.713(d) have been deleted because these transactions are no longer available.

Section 203.12 EFTPS Interest Assessments

We have not made any substantive changes to the application or calculation of EFTPS interest assessments.

Section 203.13 Appeal and Dispute Resolution

We have not made any substantive changes to the appeal and dispute resolution procedures.

Section 203.14 Scope of the Subpart

We have not changed the scope of subpart C.

Section 203.15 Tax Deposits Using FTD Coupons

Amended § 203.15 sets forth the provisions of current § 203.18, with a number of changes. We have deleted entirely the substance of § 203.18(b), which provides that FRBs must accept FTDs directly from taxpayers and sets forth procedures governing 13 these transactions. FRBs no longer accept FTDs directly from the taxpayer. We also have deleted from this section many procedural steps that are adequately addressed in procedural instructions.

Section 203.16 Retainer and Investor Depositaries

Amended § 203.16 sets forth the substance of current § 203.19. The order of subsections (a) and (b) has been reversed.

Section 203.17 Collector Depositaries

Amended § 203.17 sets forth the substance of current § 203.20, except that the order of subsections (a) and (b) has been reversed.

Section 203.18 Scope of the Subpart

We have not revised the scope of subpart D.

Section 203.19 Sources of Balances

Amended § 203.19 sets forth the substance of current § 203.22 with the addition of dynamic investments and term investments.

Section 203.20 Investment Account Requirements

We have not changed the provisions governing TIP main account balances, SDI account balances, and no account balances. The section title was changed to reflect the inclusion of the no account balances.

Section 203.21 Collateral Security Requirements

The classes of securities or instruments that are acceptable collateral to secure deposits and investments, and their respective valuations, as described in 31 CFR part 380, can be viewed at Treasury's Bureau of the Public Debt's Web site at 14 *http://www.treasurydirect.gov/instit/statreg/collateral/collateral_fiscalprograms.htm#ttl*

Amended § 203.21(c)(2) has been updated to reflect changes in the Uniform Commercial Code (which provides a private sector analogue for Treasury's BIC arrangements), relative to perfecting security interests in BIC collateral. Section 203.21(e) has also been changed. Under current § 203.21(f), when a TT&L depositary pledges acceptable securities that are not negotiable without its endorsement or assignment, it may, in lieu of placing its unqualified endorsement on each security, provide an irrevocable power of attorney authorizing the FRB to assign the securities. Amended § 203.21(e) states that by pledging acceptable securities which are not negotiable without the depositary's endorsement or assignment, a TT&L depositary, in lieu of placing its unqualified endorsement on each security, automatically grants the FRB an irrevocable power of attorney to endorse, assign or transfer the securities. The purpose of this change is to relieve both TT&L depositaries and the FRB from the administrative burden associated with providing a power-of-attorney each time such securities are pledged.

DERIVATION CHART FOR REVISED PART 203

Old section	New section
203.1	203.1
203.2	203.2
——	203.3
203.3	203.4
203.4	203.5
203.5	203.6
203.6	203.5
203.7	203.7
203.8	203.8
203.9	203.9
203.10	Removed
203.11	203.10
203.12	Removed
203.13	203.11
203.14	203.12
203.15	Removed
203.16	203.13
203.17	203.14
203.18	203.15
203.19	203.16
203.20	203.17
203.21	203.18
203.22	203.19
203.23	203.20
203.24	203.21

III. Regulatory Analyses

Administrative Procedures Act

The public is invited to submit comments on the interim rule which will be taken into account before this interim rule is confirmed as final.

This interim final rule does not substantively change the TT&L program but rather describes operational changes that have already taken place, updates terminology, and removes duplicative or unnecessary provisions. The updates in this rule will avoid confusion about the operation of the program. Under 5 U.S.C. 553(b), this rule is exempt from prior notice and comment rulemaking requirements on the grounds that the amendments are non-substantive and further delay in making these amendments is unnecessary and contrary to the public interest. For the same reasons, good cause exists to make the rule effective upon publication.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make this final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this final rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Planning and Review

The final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

This rule contains no new collections of information. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic funds transfers, Taxes.

Words of Issuance

■ For the reasons set out in the preamble, the Financial Management Service amends 31 CFR chapter II by revising part 203 to read as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Subpart A—General Information

Sec.

Subpart B—Electronic Federal Tax Payments

Subpart C—PATAX

Subpart D—Investment Program and Collateral Security Requirements for TT&L Depositaries

Authority: 12 U.S.C. 90,265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323, and 3301–3304.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the processing by financial institutions of electronic and paper-based deposits and payments of Federal taxes; the operation of the Treasury Tax and Loan (TT&L) program; the designation of TT&L depositaries; and the operation of the investment program. A financial institution may participate in the TT&L program by participating in the investment program or by accepting Federal tax payments, or both. A financial institution that accepts Federal tax payments may do so through the paper tax system (PATAX), or Electronic Federal Tax Payment System (EFTPS), or both. However, a financial institution is not designated as a TT&L depositary if it only processes EFTPS payments.

§ 203.2 Definitions.

Advice of credit (AOC) means the paper or electronic form depositaries use to summarize and report Federal Tax Deposit (FTD) coupon deposits to the Internal Revenue Service (IRS) and the Federal Reserve Bank (FRB).

Automated Clearing House (ACH) credit entry means a credit transaction originated by a financial institution, at the direction of the taxpayer, in accordance with applicable ACH formats and applicable laws, regulations, and procedural instructions.

ACH debit entry means a debit transaction originated by the Treasury Financial Agent (TFA), at the direction of the taxpayer, in accordance with applicable ACH formats and applicable laws, regulations, and instructions.

Balance limit means the highest amount a depositary has stated it will accept in its Treasury Investment Program (TIP) main account.

Borrower-In-Custody (BIC) collateral means an arrangement by which a financial institution pledging collateral to secure special direct investments and certain term investments is permitted to retain possession of that collateral, subject to terms and conditions agreed upon between the FRB and the financial institution.

Business day means any day on which a financial institution's FRB is open.

Capacity means a TT&L depositary's ability to accept additional investments in its TIP main account balance and/or its Special Direct Investment (SDI) account balance. With respect to a TT&L depositary's TIP main account balance, capacity means the balance limit or current collateral value, whichever is lower, minus the total of: the depositary's current TIP main account balance and any pending investments, plus any pending withdrawals. With respect to an SDI account balance, capacity means the dollar amount of collateral that the depositary has pledged for SDIs under a BIC arrangement minus the total of: the depositary's current SDI account balance and any pending investments, plus any pending withdrawals.

Collector depositary means a TT&L depositary that accepts paper tax payments from business customers and that may also process electronic tax payments from customers, but that does not retain any such deposits as investments or accept dynamic, direct, or special direct investments. A collector depositary may accept term investments.

Direct investment means the Department of the Treasury's (Treasury's) placement of funds with a TT&L depositary, which results in an increase to the depositary's TIP main account balance and a credit to its reserve account.

Dynamic investment means Treasury's placement of funds with a TT&L depositary throughout the day, which results in an increase to the depositary's TIP main account balance and a credit to its reserve account.

Electronic Federal Tax Payment System (EFTPS) means the system through which taxpayers remit Federal tax payments electronically.

Federal Reserve Bank (FRB) means the FRB of the district where the financial institution is located, or such other FRB that may be designated in an FRB operating circular, or such other FRB that may be designated by the Treasury. A financial institution is deemed located in the same district it would be deemed located for purposes of Regulation D (12 CFR 204.3(b)(2)), even if the financial institution is not otherwise subject to Regulation D.

Federal Tax Deposit (FTD) means a Federal tax deposit made using an FTD coupon.

FTD coupon means a paper form supplied to a taxpayer by Treasury to accompany deposits of Federal taxes made through PATAX.

Federal taxes means those Federal taxes or other payments specified by the Secretary of the Treasury as eligible for payment through the procedures described in this part.

Fedwire®1 means the funds transfer system owned and operated by the FRBs.

Fedwire® non-value transaction means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire@ type 1090 message to authorize a payment.

Fedwire® value transfer means a Federal tax payment made by a financial institution using a Fedwire® type 1000 message.

Financial institution means any bank, savings bank, savings association, credit union, or similar institution.

Fiscal agent means the FRB acting as agent for Treasury.

Investment program is the all-inclusive name given to the programs by which Treasury invests excess operating cash.

Investor depositary means a TT&L depositary that is authorized to participate in the investment program by accepting funds from Treasury via direct investments, special direct investments, dynamic investments, or term investments. In addition, an investor depositary may accept electronic or paper Federal tax payments from its business customers and retain a portion of those tax deposits, depending on the capacity of its TIP main account balance.

Paper Tax System (PATAX) means the paper-based system through which taxpayers remit Federal tax payments by presenting an FTD coupon and payment to a TT&L depositary.

Procedural instructions means the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued by Treasury or through Treasury's Financial Agents and FRB operating circulars, and agreements issued consistent with this part.

Recognized insurance coverage means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and insurance organizations specifically qualified by the Secretary.

Reserve account means an account at an FRB with reserve or clearing balances held by a financial institution or its designated correspondent financial institution, if applicable.

Retainer depositary means a TT&L depositary that accepts electronic and/or paper Federal tax payments from its business customers and retains a portion of the Federal tax deposits in its TIP main account balance, depending on its balance limit, account balance, and collateral value. A retainer depositary may also accept term investments.

Same-day payment means a payment made by a Fedwire® non-value transaction or a Fedwire® value transaction.

Secretary means the Secretary of the Treasury, or the Secretary's delegate.

Special Direct Investment (SDI) means the placement by Treasury of funds with an investor depositary secured by collateral pledged under a BIC arrangement.

SDI account balance means an open-ended, interest-bearing note maintained on the books of the Treasury Support Center representing the amount of SDIs held by an investor depositary and secured by collateral pledged under a BIC arrangement.

Tax due date means the day on which a Federal tax payment is due to Treasury, as determined by statute and IRS regulations.

Term Investments means Treasury's excess operating funds that have been offered for a predetermined period of time and accepted by depositaries participating in the Term Investment Option.

Term Investment Option (TIO) means the program available to depositaries that offers the ability to borrow excess Treasury operating funds for a predetermined period of time.

TIO account balance means an interest-bearing note maintained on the books of the Treasury Support Center for a predetermined period of time.

Treasury Financial Agent (TFA) means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, consolidating EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury as authorized by the taxpayer.

Treasury General Account (TGA) means an account maintained in the name of the United States Treasury at an FRB.

Treasury Investment Program (TIP) means the automated system under the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure public money.

TIP main account balance means an open-ended interest-bearing note maintained on the books of the Treasury Support Center (TSC) representing a retainer or investor depositary's current net amount of (i) Federal tax deposits retained by the depositary and/or (ii) Treasury investments made under the Direct investment program.

Treasury Support Center (TSC) means the office at the FRB that, as Treasury's Fiscal agent, monitors collateral pledged to secure Treasury funds, manages TT&L program participation for depositaries, and/or carries on its books depositaries' TIP main account balances, SDI account balances, and/or Term Investment Option (TIO) account balances.

Treasury Tax and Loan (TT&L) account means a record of transactions on the books of a TT&L depositary reflecting paper tax deposits received by the depositary.

TT&L depositary or depositary means a financial institution designated as a depositary by Treasury or the FRB of St. Louis acting as Treasury's Fiscal agent, for the purpose of participating in the investment program and/or PATAX. There are three kinds of TT&L depositaries: investor depositaries, retainer depositaries, and collector depositaries.

TT&L program means the program for collecting Federal taxes and investing the Government's excess operating funds.

TT&L rate of interest means the interest charged on the TIP main account balance and the SDI account balance. The TT&L rate of interest is the rate prescribed by the Secretary taking into consideration prevailing market interest rates. The rate and any rate changes will be announced through a TT&L Special Notice to Depositaries and will be published in the **Federal Register** and on a Web site maintained by Treasury's Financial Management Service at *http://www.fms.treas.gov*.

§ 203.3 TT&L depositaries.

A financial institution that participates in PATAX and/or the investment program must be a TT&L depositary. There are three kinds of TT&L depositaries. A collector depositary is a TT&L depositary that accepts paper Federal tax payments and also may accept electronic Federal tax payments, but does not accept direct investments or SDIs. A retainer depositary is a TT&L depositary that accepts electronic and/or paper Federal tax payments and retains a portion ofthe tax deposits in its TIP main account balance. An investor depositary is a TT&L depositary that accepts direct investments, SDIs, or dynamic investments and may accept electronic and/or paper Federal tax payments and retain a portion of those tax deposits. Collector, retainer, and investor depositaries may accept term investments. Retainer and investor depositaries do not have to participate in PATAX.

§ 203.4 Financial institution eligibility for designation as a TT&L depositary.

(a) To be designated as a TT&L depositary, a financial institution must be insured as a national banking

association, state bank, savings bank, savings association, building and loan, homestead association, Federal home loan bank, credit union, trust company, or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution must possess the authority to pledge collateral to secure TT&L account balances, a TIP main account balance, an SDI account balance, or a no account balance as applicable.

(c) In order to be designated as a TT&L depositary for the purposes of processing Federal tax deposits through PATAX, a financial institution must possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, investor depositaries and retainer depositaries must possess either general or specific authority permitting the maintenance of a TIP main account 27 balance or an SDI account balance. Investor, retainer, and collector depositaries that accept term investments must possess either general or specific authority permitting the maintenance of a TIO account balance. In the case of investor and retainer depositaries maintaining a TIP main account balance or an SDI account balance, the authority must perm it the maintenance of a TIP main account balance or an SDI account balance which is payable on demand without previous notice of intended withdrawal.

§ 203.5 Designation of financial institutions as TT&L depositaries.

(a) *Parties to the agreement.* To be designated as a TT&L depositary, a financial institution must enter into a depositary agreement with Treasury or Treasury's Fiscal agent. By entering into this agreement, the financial institution agrees to be bound by this part, and procedural instructions issued pursuant to this part. Treasury will not compensate depositaries for servicing and maintaining a TT&L account, or for processing tax payments through EFTPS or PATAX, unless otherwise provided for in procedural instructions.

(b) *Application procedures.* (1) An eligible financial institution seeking designation as a TT&L depositary must file the forms specified in the procedural instructions with the TSC. A TT&L depositary must elect to be one or more of the following:

(i) A collector depositary;

(ii) a retainer depositary;

(iii) an investor depositary.

(2) A financial institution is not authorized to maintain a TT&L account, TIP main account balance, SDI account balance, or TIO account balance until the TSC designates it as a TT&L depository.

§ 203.6 Obligations of TT&L depositaries.

A TT&L depositary must:

(a) Administer a TIP main account balance, SDI account balance, or TIO account balance, as applicable, if participating in the investment program.

(b) Administer a TT&L account, if participating in PATAX.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (3 CFR, 1964–1965 Comp., p. 339) as amended by Executive Orders 11375 and 12086 (3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1978 Comp., p. 230), and the regulations issued thereunder at 41 CFR chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701 (3 CFR 1971–1975 Comp., p. 752), and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam-era veterans.

§ 203.7 Termination of agreement or change of election or option.

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a TT&L depositary at any time upon notice to that effect to that depositary, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depositary.* A TT&L depositary may terminate its depositary agreement, or change its option or election, consistent with this part and the procedural instructions, by prior written notice to the TSC.

§ 203.8 Application of part and procedural instructions.

The terms of this part and the procedural instructions issued pursuant to this part will be binding on financial institutions that process Federal tax payments or maintain a TT&L account, TIP main account balance, SDI account balance, or a TIO account balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part and by procedural instructions issued pursuant to this part.

Subpart B—Electronic Federal Tax Payments

§ 203.9 Scope of the subpart.

This subpart prescribes the rules that financial institutions must follow when they process electronic Federal tax payment transactions. A financial institution is not required to be designated as a TT&L depositary in order to process electronic Federal tax payments. In addition, a financial institution does not become a TT&L depositary by processing electronic Federal tax payments under this subpart and may not represent itself as a TT&L depositary because it does so.

§ 203.10 Electronic payment methods.

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH debit entries, ACH credit entries, and same-day payments.

(b) *Conditions to making an electronic payment.* This part does not affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, as long as the terms and conditions of those contracts are not inconsistent with this part and with any laws that apply to the particular transactions.

(c) *Payment of interest for time value of funds held.* Treasury will not pay interest on any payment that a financial institution erroneously originates and that subsequently is refunded.

§ 203.11 Same-day reporting and payment mechanisms.

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB by the deadline established by Treasury in the procedural instructions.

(b) *Fedwire® non-value transaction.* By initiating a Fedwire® non-value transaction, a financial institution authorizes the TSC to debit its reserve account for the amount of the Federal tax payment specified in the transaction.

(1) For an investor or retainer depositary using a Fedwire® non-value transaction, the TSC will credit the Federal tax payment amount, up to the depositary's available TIP main account balance capacity, to the depositary's TIP main account balance on the day of the

transaction. Throughout the course of the day, the TSC will debit from the depositary's reserve account, and credit to the TGA, any portion of a tax payment amount that would exceed the institution's available TIP main account balance capacity.

(2) For a collector depositary or a non-TT&L depositary financial institution using a Fedwire® non-value transaction, the TSC will debit the financial institution's reserve account for the Federal tax payment amount and credit that amount to the TGA on the day of the transaction.

(c) *Cancellations and reversals.* In addition to cancellations due to insufficient funds in the financial institution's reserve account, the FRB may reverse a same-day transaction:

(1) If the transaction:

(i) Is originated by a financial institution after the deadline established by Treasury in the procedural instructions;

(ii) Has an unenrolled taxpayer identification number; or

(iii) Does not meet the edit and format requirements set forth in the procedural instructions; or

(2) At the direction of the IRS, for the following reasons:

(i) Incorrect taxpayer name;

(ii) Overpayment; or

(iii) Unidentified payment; or

(3) At the request of the financial institution that sent the same-day transaction, if the request is made prior to the payment day deadline established by Treasury in the procedural instructions.

(d) Other than as stated in paragraph (c) of this section, Treasury is not obligated to reverse all or any part of a payment.

§ 203.12 EFTPS interest assessments.

(a) *Circumstances subject to interest assessments.* Treasury may assess interest on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS that the delivery of Federal tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.10(b). Treasury also may assess interest where a financial institution fails to respond to an ACH prenotification entry on an ACH debit as required under part 210 of this title, or fails to originate an ACH prenotification or zero dollar entry on an ACH credit at a taxpayer's request, which then results in a late payment.

(b) *Calculation of interest assessment.* Any interest assessed under this section will be at the TT&L rate of interest. Treasury will assess the interest from the day the taxpayer specified that its payment should settle to the Treasury until the day Treasury receives the payment, subject to the following limitations: for ACH debit transactions, interest will be limited to no more than seven calendar days; For ACH credit and same-day transactions, interest will be limited to no more than 45 calendar days. The limitation of liability in this paragraph does not apply to any interest assessment in which there is an indication of fraud, the presentation of a false claim, or misrepresentation or embezzlement on the part of the financial institution or any employee or agent of the financial institution.

(c) *Authorization to assess interest.* A financial institution that processes Federal tax payments made electronically under this subpart is deemed to authorize the TSC to debit its reserve account for any interest assessed under this section. Upon the direction of Treasury, the TSC will debit the financial institution's reserve account for the amount of the assessed interest.

(d) *Circumstances not resulting in the assessment of interest.*

(1) Treasury will not assess interest on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.10(b) and the financial institution has not contributed to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.13, that the taxpayer has not satisfied the conditions and that the financial institution has not caused or contributed to the delay.

(2) Treasury will not assess interest on a financial institution if a taxpayer fails to meet a tax due date because the FRB or the TFA caused a delay and the financial institution did not contribute to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.13, that it did not cause or contribute to the delay.

203.13 Appeal and dispute resolution.

(a) *Contest.* A financial institution may contest any interest assessed under § 203.12 or any late fees assessed under § 203.17. To do so, the financial institution must submit information supporting its position and the relief sought. The information must be received, in writing, by the Treasury officer or Fiscal agent identified in the procedural instructions, no later than 90 calendar days after the date the TSC debits the Federal reserve account of the financial institution under § 203.12 or § 203.17. The Treasury officer or Fiscal agent will make a decision to: Uphold, reverse, or modify the assessment, or mandate other action.

(b) *Appeal.* The financial institution may appeal the decision referenced in subsection (a) to Treasury as set forth in the procedural instructions. No further administrative review of Treasury's decision is available under this part.

(c) *Recoveries.* In the event of an over or under recovery of interest, principal, or late fees, Treasury will instruct the TSC to credit or debit the financial institution's reserve account.

Subpart C—PATAX

§ 203.14 Scope of the subpart.

This subpart applies to all TT&L depositaries that accept FTD coupons and governs the acceptance and processing of those coupons.

§ 203.15 Tax deposits using FTD coupons.

A TT&L depositary processing FTD coupons may choose to be designated as a retainer depositary, an investor depositary, or a collector depositary. A TT&L depositary that accepts FTD coupons through any of its offices that accept demand and/or savings deposits must:

(a) Accept from a taxpayer that presents an FTD coupon: cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes. A TT&L depositary may accept, at its discretion, a check drawn on another financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(b) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp must reflect the date on which the TT&L depositary received the tax deposit and the name and location of the depositary. The IRS will determine whether the tax payment is on time by referring to the date stamped on the FTD coupon.

(c) Forward, each day, to the IRS Service Center serving the geographical area in which the TT&L depositary is located, the FTD coupons for all FTD deposits received that day and a copy of the AOC reflecting the total amount of all FTD coupons.

(d) Establish an adequate record of all FTD deposits prior to transmitting them to 36 the IRS Service Center so that the TT&L depositary will be able to identify deposits in the event the FTD coupons are lost in shipment. To be adequate, the record must show, at a minimum for each deposit, the date of the deposit, the

taxpayer identification number, the amount of the deposit, the tax period ending date, the type of tax deposited, and the employer name. Alternatively, the TT&L depositary may retain a copy of each FTD coupon forwarded to the IRS Service Center.

(e) On the business day following receipt of an FTD coupon, submit the AOC information electronically to the TSC.

(f) Not accept compensation from taxpayers for accepting FTDs and handling them as required by this section.

§ 203.16 Retainer and investor depositaries.

(a) *Credit to TIP main account balance.* On the business day that the TSC receives an AOC from a retainer or investor depositary, the TSC will credit the depositary's TIP main account balance for the amount reported on the AOC unless there isn't sufficient capacity. In that case, any amount in excess of the capacity will be debited to the reserve account and credited to the TGA.

(b) *Late delivery of AOC.* If an AOC does not arrive at the TSC before the designated cutoff time for receipt, the TSC will credit the amount of funds to the depositary's TIP main account balance as of the date of receipt of the AOC. However, the date on which funds will begin to earn interest for Treasury is the next business day after the AOC date.

§ 203.17 Collector depositaries.

(a) *Debit to reserve account.* On the business day that the TSC receives an AOC from a collector depositary, the TSC will debit the depositary's reserve account for the amount reported on the AOC and credit that amount to Treasury's account.

(b) *Late delivery of AOC.* If an AOC does not arrive at the TSC before the designated cutoff time on the first business day after the AOC date, an FTD late fee in the form of interest at the TT&L rate of interest will be assessed for each day's delay in receipt of the AOC. Upon the direction of Treasury, the TSC will debit the depositary's reserve account for the amount of the late fee.

Subpart D—Investment Program and Collateral Security Requirements for TT&L Depositaries

§ 203.18 Scope of the subpart.

This subpart governs the operation of the investment program, including the rules that TT&L depositaries must follow in crediting and debiting TIP main account balances, SDI account balances, and TIO account balances, and pledging collateral security.

§ 203.19 Sources of balances.

A financial institution must be a collector depositary that accepts term investments, an investor depositary, or a retainer depositary to participate in the investment program. Depositaries electing to participate in the investment program can receive Treasury's investments in obligations of the depositary from the following sources:

(a) FTDs that have been credited to the depositary's TIP main account balance pursuant to subpart C of this part;

(b) EFTPS ACH credit and debit transactions, Fedwire® non-value transactions, and Fedwire® value transfers pursuant to subpart B of this part;

(c) Direct investments, SDIs, dynamic investments, and term investments pursuant to subpart D of this part; and

(d) Other excess Treasury operating funds.

§ 203.20 Investment account requirements.

(a) *Additions.* Treasury will invest funds in obligations of collector depositaries that accept term investments, investor depositaries, or retainer depositaries. Such obligations will be in the form of open-ended interest-bearing notes, or in the case of term investments, interest-bearing notes maintained for a predetermined period of time, and additions and reductions will be reflected on the books of the TSC.

(1) *PATAX.* The TSC will credit the TIP main account balance as stated in § 203.16(a) for an investor or retainer depositary processing tax deposits through PATAX.

(2) *EFTPS.*

(i) *ACH debit and ACH credit.* The TSC will credit a depositary's TIP main account balance, and credit the depositary's reserve account if capacity exists, for the amount of EFTPS ACH debit and credit entries on the day such entries settle.

(ii) *Fedwire [reg] value and non-value transactions.* The TSC will credit a depositary's TIP main account balance if capacity exists, throughout the day on the day of settlement, for the amount of Fedwire [reg] value and non-value transactions. In the case of Fedwire® value transactions, the depositary's reserve account will also be credited.

(b) *Additional offerings.* Other funds from Treasury may be offered from time to time to depositaries participating in the investment program through direct investments, SDIs, term investments, or other investment programs.

(c) *Withdrawals.* The amount of a TIP main account balance or SDI account balance is payable on demand without prior notice. The TSC will make calls for payment at the direction of the Secretary. On behalf of Treasury, the TSC will debit the depositary's reserve account on the day specified in the call for payment.

(d) *Interest.* The TIP main account balance and the SDI account balance bear interest at the TT&L rate of interest. Such interest is payable by a charge to the depositary's reserve account in the manner prescribed in the procedural instructions.

(e) *Balance limits.*

(1) *Retainer and investor depositaries.* A retainer or investor depositary must establish an initial balance limit for its TIP main account balance by providing notice to that effect in writing to the TSC. The balance limit is the amount of funds for which a retainer or investor depositary is willing to provide collateral in accordance with § 203.21(c)(1). The depositary must follow the procedural instructions before reducing the established balance limit unless the reduction results from a collateral revaluation as determined by the FRB. That portion of any PATAX or EFTPS tax payment which, when posted at the FRB, would cause the TIP main account balance to exceed the balance limit specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investments.* An investor depositary that participates in direct investments must set a balance limit for direct investment purposes which is higher than the peak balance normally generated by the depositary's PATAX and EFTPS tax payment inflow. The depositary must follow the procedural instructions before reducing the established balance limit.

(3) *SDIs.* SDIs are credited to the SDI account balance and are not considered in setting the amount of the TIP main account balance limit or in determining the amounts to be withdrawn where a depositary exceeds its TIP main account balance limit.

(f) *TIO.* Treasury may, from time to time, invest excess operating funds in obligations of depositaries awarded funds under TIO. Such obligations will be in the form of interest-bearing notes payable upon a predetermined period of time not to exceed 90 days. Such notes will bear interest at a rate prescribed by the Secretary by auction or otherwise taking into consideration prevailing market interest rates.

§ 203.21 Collateral security requirements.

Financial institutions that process EFTPS tax payments, but that are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are TT&L depositaries have collateral security requirements, as follows:

(a) *Investor and retainer depositaries.*

(1) *PATAX and EFTPS tax payments.* Investor and retainer depositaries must pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the TIP main account balance and the balance in the TT&L account that exceeds the recognized insurance coverage.

(2) *Direct investments.* An investor depositary is required to pledge collateral in accordance with the requirements of paragraphs (c), (d), and (e) of this section no later than the day before a direct investment is placed. However, each investor depositary participating in same-day direct investments must pledge, prior to the announcement, collateral up to its balance limit to obtain the depositary's maximum portion of the same-day direct investment.

(3) *SDIs.* The day before SDIs are credited to an investor depositary's SDI account balance, the depositary must pledge collateral security, in accordance with the requirements of paragraphs (c)(2), (d), and (e) of this section, to cover the total of the SDIs to be received.

(4) *TIO.* Each depositary participating in the term investment program must pledge, prior to the time the term investment is placed, collateral in accordance with paragraphs (c)(1), (c)(2) for certain term investments as determined by Treasury, (d), and (e) of this section sufficient to cover the total TIO account balance.

(b) *Collector depositaries.* Prior to crediting FTD deposits to the TT&L account, a collector depositary must pledge collateral security, in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section, in an amount which is sufficient to cover the balance in the TT&L account that exceeds the recognized insurance coverage.

(c) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), (4) (except as provided in subparagraph (2) below), and (b) of this section must be deposited with the depositary's FRB, or with a custodian or custodians within the United States designated by the TSC or FRB, under terms and conditions prescribed by the TSC or FRB.

(2) A depositary pledging collateral security as required under paragraph (a)(3) or paragraph (a)(4) (when permitted) of this section must pledge the collateral under a written security agreement on a form provided by the FRB. The collateral security pledged to satisfy the requirements of paragraphs (a)(3) and (a)(4) (when permitted) of this section may remain in the pledging depositary's possession provided that the pledging is evidenced by advices of custody incorporated by reference in the written security agreement. The depositary must provide the written security agreement and all advices of custody covering collateral security pledged under that agreement to the FRB. Collateral security pledged under the agreement may not be substituted for or released without the advance approval of the FRB, and any collateral security subject to the security agreement will remain so subject until an approved substitution is made. No substitution or release will be approved until an advice of custody containing the description required by the written security agreement is received by the FRB.

(3) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraphs (c)(2) of this section to secure SDIs and certain term investments is perfected without Treasury taking possession of the collateral security by filing or, absent filing, for a period not to exceed 20 calendar days from the day of the depositary's receipt of the special direct or term investment.

(d) *Acceptable collateral.* The types of securities that may be used as collateral, and how those securities are valued, are set forth in 31 CFR part 380.

(e) *Assignment of securities.* By pledging acceptable securities which are not negotiable without the depositary's endorsement or assignment, a TT&L depositary, in lieu of placing its unqualified endorsement on each security, appoints the FRB or its assigns as the depositary's attorney-in-fact with full irrevocable power and authority to endorse, assign or transfer the securities, and represents and warrants that an appropriate resolution authorizing the granting of such irrevocable power of attorney has been executed and adopted. The powers of attorney so granted are coupled with an interest and are irrevocable, and full power of substitution is granted to the assignee or holder.

(f) *Effecting payments of principal and interest on securities or instruments pledged as collateral.* (1) *General.* Treasury, without notice or demand, may sell or otherwise collect the proceeds of all or part of the collateral, including additions, substitutions, interest, and distribution of principal, and apply the proceeds to satisfy any claims of the United States against the depositary, if any of the following events occur:

(i) The depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account and, if applicable, its TIP main account balance, SDI account balance, or TIO account balance;

(ii) The depositary fails to pay when due amounts owed to the United States or the United States Treasury;

(iii) The depositary otherwise violates or fails to perform any of the terms of this part or any of the procedural instructions entered into hereunder; or

(iv) The depositary is closed for business by regulatory action or by proper corporate action, or a receiver, conservator, liquidator, or any other officer is appointed for the depositary. All principal and interest payments on any security pledged to protect the TIP main account balance, the SDI account balance, the TIO account balance or the TT&L account, as applicable, due as of the date of the insolvency or closure or thereafter becoming due, will be held separate and apart from any other assets and will constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.* (i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) will, as soon as possible, remit to the FRB, as Fiscal agent, each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section. The remittance will be made no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section, upon notification that Treasury is entitled to any payment associated with that pledged security, must make each payment of principal and/or interest due with respect to such security directly to the FRB, as Fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.7 and also those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral

or the waiver is otherwise terminated by Treasury.

Dated: October 11, 2007.

Kenneth R. Papaj,

Commissioner.

[FR Doc. 07–5135 Filed 10–18–07; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB70

Sale and Disposal of National Forest System Timber; Modification of Timber Sale Contracts in Extraordinary Conditions; Noncompetitive Sale of Timber

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises regulations at Title 36, Code of Federal Regulations, part 223, on noncompetitive disposal of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist. A notice with request for comment on an interim final rule was published in the **Federal Register** on June 16, 2006. The Forest Service made appropriate changes to the rule in response to the public comments.

DATE: This rule is effective November 19, 2007.

ADDRESSES: The public may inspect comments received at Office of the Director, Forest Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250. Visitors are encouraged to call ahead to (202) 205–1496 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Forest Management Staff personnel, Lathrop Smith (202) 205–0858, or Richard Fitzgerald (202) 205–1753.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The National Forest Management Act (NFMA), codified in part at Title 16 U.S.C. 472a(d), requires the Secretary of Agriculture to advertise all sales of forest products unless the appraised value of the sale is less than $10,000, or the Secretary determines that extraordinary conditions exist, as defined by regulation. The requirement to advertise sales unless extraordinary conditions exist applies to the substitution of timber outside a sale contract area.

Prior to NFMA, the Government Accountability Office (formerly the General Accounting Office) held that substitution of timber outside the contract area for timber in the contract area violated the Agency's authority to sell timber.[1] Since the passage of NFMA, but in the absence of a regulation defining "extraordinary conditions," the Agriculture Board of Contract Appeals has decided similarly in several cases.[2]

Before authorizing activities on National Forest System lands, the Forest Service must ensure compliance with applicable laws and regulations and with conditions on the ground at the time of the authorization. Even so, after entering into timber sale contracts, environmental changes may occur such as the listing of a new species on the endangered species list, or a catastrophic event may occur, such as a large wildfire, resulting in the need to modify the contracts. Also, court orders and decisions resulting from environmental litigation may require making changes to existing contracts even when those contracts are not specifically named in the litigation if they are similar to contracts that were named. When this occurs, it is essential for Forest Service officials to have flexibility to adjust management activities and contractual arrangements without incurring enormous financial liability associated with unilateral modifications or contract cancellations.

At the time a sale is sold, there is no way to predict what future litigation or environmental changes may occur that will result in the sale contract needing to be changed. Each occurrence is a unique situation that constitutes an extraordinary condition. The Forest Service needs the ability to provide replacement timber or forest products for contracts that must be modified to prevent environmental degradation or resource damage, or as a result of administrative appeals, litigation, court orders, or catastrophic events that occur after contract award. Thus, the Forest Service promulgated an interim final rule, published June 16, 2006 (71 FR 34823), on noncompetitive sale of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist whenever a timber or forest products contract needs to be modified or canceled to address such unexpected changes. This benefits the Government by providing contracting officers with an opportunity to avert costly claims by providing replacement timber or forest products from outside the contract area when replacement timber is not available within the contract area. Replacement timber also helps maintain the industry infrastructure, which in turn will maintain forest management options.

Response to Comments

A 60-day comment period on the interim final rule was initiated on June 16, 2006, (71 FR 34823). Only two respondents replied. One respondent is an individual and the other respondent is a timber industry association.

Comment 1: The constraints that the value of replacement material may not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less, are too restrictive and will hamper implementation and use of this valuable tool. On small amounts of replacement timber, 10% may represent a very small amount of money, and on large volumes the $10,000 may represent a small percentage of value. If one or both of these numbers has some basis in law and cannot be removed, the only fair way to deal with this situation is to have these be upper and lower limits.

Response 1: The limitations were intended to reduce potential impacts to other purchasers while making the purchaser of a sale that must be modified or terminated whole. Replacement timber from outside the sale area will most likely come from some other sale that would otherwise be offered competitively on the open market. Offering substantially more replacement timber than the amount or value being deleted by a unilateral termination goes beyond making a purchaser whole, circumvents fair and open competition and could have detrimental consequences to other purchasers, the public, and Forest Service program objectives. For the following reasons the Forest Service agrees that the 10% limit is unnecessary but disagrees that the $10,000 limit is overly restrictive.

The National Forest Management Act (NFMA) requires advertising sales greater than $10,000 in appraised value unless the Secretary determines, as

[1] Letter to Mr. Secretary, 1973 WL 7905 (Comp. Gen.), B–177602 (1973).

[2] See Appeal of Summit Contractors, 1986 WL 19566 (AGBCA), Nos. 81–252–1, No. 83–312–1 (Jan. 8, 1986), and Appeal of Jay Rucker, 1980 WL 2345 (AGBCA) Nos. 79–211A, 79–211B (June 11, 1980). See also, *Croman Corporation* v. *United States*, 31 Fed. Cl. 741, 746–47 (August 16, 1994).

defined by regulation, that extraordinary conditions exist (16 U.S.C. 472a(d)). The intent of this rule is to establish the Secretary's determination of extraordinary conditions so that replacement timber of similar quantity and value can be obtained from outside the sale area without advertisement, even when its total value is greater than $10,000. The Forest Service recognizes, however, that exact matches with the original contract value, quantity and quality are unlikely and that a defined measure of acceptable deviation is necessary. The Forest Service believes that providing replacement timber volume with an appraised value of no more than $10,000 over the original contract value is an acceptable amount of deviation. The premise for this is that the original value of the timber being replaced was established after advertisement and the opportunity for competitive bidding in accordance with the advertisement and competition requirements of NFMA and its implementing regulations. Therefore, only the value of replacement timber exceeding the value of the original timber volume being replaced was not previously subject to advertisement and competition requirements. Advertisement and competition of the excess replacement timber is not required by NFMA or the regulations so long as the excess value remains at or below $10,000.

The rules at 36 CFR 223.112 require that contract modifications must not be done in a manner that would be injurious to the United States. For the reasons stated above, the Forest Service believes that replacement timber valued at no more than $10,000 over the original contract value adequately accounts for differences in contract and replacement timber value and ensures that contracts are not modified in a manner that would be injurious to the United States. Imposing the $10,000 upper limit on the value of replacement timber establishes a reasonable and acceptable measure of deviation, prevents a purchaser from getting a potential windfall, and eliminates the need for the Forest Service to determine, on a case-by-case basis, the level of acceptable deviation that may result in a modification that is not injurious to the United States. The Forest Service does not believe this upper limit is overly restrictive and will retain it in the final rule. The Forest Service agrees, however, that the 10% limit imposed in the interim final rule is not necessary for determining an acceptable level of deviation, and for that reason, it will be eliminated from the final rule.

The respondent suggested that if there was an upper limit there should be a corresponding lower limit on the value of replacement timber. For example, if $50,000 of replacement timber is needed, applying the $10,000 limit addressed above would require the value of replacement timber to be no less than $40,000. The Forest Service disagrees as this would have the effect of guaranteeing replacement timber which is simply an alternative remedy, when it is available, to liquidated damages addressed in the contracts. Although the rule provides broad authority for authorizing replacement timber for a variety of reasons, neither the rule nor the contracts require the Forest Service to provide, or the purchaser to agree to replacement timber. No changes are made in response to this portion of the comment.

Comment 2: The Forest Service should clarify the standard used to determine what volume will be removed from a contract because of wildfire or similar catastrophic event.

Response 2: The reference to catastrophic events in the interim final rule has led to confusion with some interpreting this to mean that the Forest Service would replace catastrophically damaged timber with comparable undamaged timber. This was not the intent. Replacement timber is only a remedy for a contract termination or partial termination under subsection B/BT8.34 Contract Termination. Replacement timber is not a remedy for a contract termination or partial termination under subsection B/BT8.22 Termination for Catastrophe. However, a single sale could be terminated under both B/BT8.22 and B/BT8.34.

For example, a fire catastrophically damages 60% of a sale area including several uncut units and timber between those units. Pursuant to B/BT8.32 Modification for Catastrophe, the Forest Service and Purchaser try, but cannot reach agreement on a modification for harvesting the catastrophically affected timber, and elect termination under B/BT8.22. The remaining 40% of the sale was not damaged, includes "green" units that the purchaser wants to cut, and pursuant to B/BT8.32 Modification for Catastrophe the parties agree could be logged separately from the catastrophically damaged timber. But, the Forest Service determines that because of the changed conditions caused by the fire, harvesting the remaining green units will cause environmental degradation and starts the process to terminate that portion of the contract pursuant to B/BT8.34. Replacement timber from outside the sale area could be considered for the undamaged timber included under the B/BT8.34 termination but not for the damaged timber included under the B/BT8.22 termination. Although the catastrophic event caused the situation leading to a decision to terminate the undamaged portions of the sale, the actual reason to terminate is to prevent environmental degradation. Referencing catastrophic events in the rule is unnecessary and because the reference can be misinterpreted it has been eliminated in the final rule.

Contracts awarded prior to the April 2004 version of the Timber Sale Contract do not contain references to replacement timber in event of a termination but the rule potentially could be applied to those contracts as well via a contract modification. The Forest Service agrees that more clarification of how the rule could be applied to those contracts would help and will do that with an amendment to the Timber Sale Administration Handbook FSH 2409.15. But no changes to the rule are needed to address this situation.

Comment 3: Offering substitute timber outside the sale area specified in the contract is a common sense approach to meeting contractual obligations and maintaining an equitable balance of risk. Replacement timber will help maintain the industry infrastructure which will maintain forest management options.

Response 3: The Forest Service agrees. No changes are made in response to this comment.

Comment 4: The respondent opposed the determination of "extraordinary conditions" likening it to an environmental assault emanating from the U.S. Department of Agriculture and suggesting that the determination is based on the desires of lobbyists working for the timber industry in corrupt Washington.

Response 4: The Forest Service disagrees that the determination of extraordinary conditions is made based on the desires of timber industry lobbyists. The determination has precedent supporting it. In 1996, the Secretary promulgated an interim final rule set out at 36 CFR 223.85(b), that defined extraordinary conditions for sales released pursuant to section 2001(k) of the 1995 Rescissions Act (61 FR 14618, April 3, 1996). The 1996 rule has reduced claims by allowing timber from outside the sale area specified in the contract to be substituted, without advertisement, on specific timber sales in Washington and Oregon affected by the 1995 Rescissions Act. A similar result is anticipated with this rule. The only impact of this determination is to allow replacement timber or other forest

products without advertisement. The Forest Service may consider only such timber or forest products for replacement purposes for which the agency has completed the appropriate environmental analysis and made a decision to authorize its harvest. Additionally, any applicable comment, appeal, or objection process for the harvest must have been completed. No changes are made in response to this comment.

Comment 5: Respondent supported the concept of replacement timber in lieu of contract cancellations noting that this will benefit the public by encouraging on-the-ground resource management while minimizing taxpayer burdens associated with damage claims.

Response 5: The Forest Service agrees. No changes are made in response to this comment.

Comment 6: Replacement timber will help maintain the industry infrastructure, which will in turn maintain forest management options.

Response 6: The Forest Service agrees. No changes are made in response to this comment.

Explanation of Revisions to 36 CFR Part 223, Subpart B

The interim final rule in § 223.85(c), specified that extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, court orders, or catastrophic events. The reference to catastrophic events in the interim final rule led to confusion with some interpreting this to mean that the Forest Service would replace catastrophically damaged timber with comparable undamaged timber. The intent was to address situations where harvesting the remaining green timber on a catastrophically damaged sale would result in environmental degradation or resource damage. In those situations, replacement timber would be an alternative to harvesting the remaining green timber or canceling the contract. The intent of the rule was not to replace catastrophically damaged timber with undamaged timber. The reference to catastrophically damaged timber has been removed in this final rule.

Section 223.85(c), of the interim final rule specified that the value of replacement timber or forest products may not exceed the value of the material it is replacing by more than 10% or $10,000, whichever is less as determined by standard Forest Service appraisal methods. Based on comments received on the interim final rule, and further evaluation by the Forest Service, the 10% limit has been removed in the final rule.

Section 223.85(c), of the interim final rule specified that the replacement timber or forest products must come from the same National Forest as the original contract. In some cases, several proclaimed National Forests have been combined under one Forest Supervisor for administration purposes. The term National Forest in this paragraph refers to an administrative unit headed by a single Forest Supervisor. This distinction has been added to the final rule.

Regulatory Certifications

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review, as amended by E.O. 13422 on January 23, 2007. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Moreover, this rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility assessment has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. The rule has no adverse or special impacts on small business, small not-for-profit organizations, or small units of the Government because it imposes no additional requirements on the affected public.

Environmental Impact

Section 31.12 of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." The Agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist, and therefore, the preparation of an environmental assessment or environmental impact statement for this rule is not required.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the rule will not pose the risk of a taking of private property, as the rule is limited to the establishment of administrative procedures.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) this rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Federalism

The Agency has considered this rule under the requirements of Executive Order 13132, Federalism. The Agency has made an assessment that the rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation and Coordination with Indian Tribal Governments

This rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

This rule does not require any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Administrative practice and procedures, Forests and forest products, Exports, Government contracts, National forests, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, the Forest Service is amending part 223 of title 36 of the Code of Federal Regulations as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

■ 2. Revise § 223.85(c) to read as follows:

§ 223.85 Noncompetitive sale of timber.

* * * * *

(c) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, or court orders. Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, when such extraordinary conditions exist on sales not addressed in paragraph (b) of this section, the Secretary of Agriculture may allow forest officers to, without advertisement, modify those contracts by substituting timber or other forest products from outside the contract area specified in the contract for timber or forest products within the area specified in the contract. When such extraordinary conditions exist, the Forest Service and the purchaser shall make good faith efforts to identify replacement timber or forest products of similar volume, quality, value, access, and topography. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products, except those specifically provided for under the contract up to the time of the modification. If the Forest Service and the purchaser cannot reach agreement on satisfactory replacement timber or forest products, or the proper value of such material, either party may opt to end the search. Replacement timber or forest products must come from the same National Forest as the original contract. The term National Forest in this paragraph refers to an administrative unit headed by a single Forest Supervisor. Only timber or forest products for which a decision authorizing its harvest has been made and for which any applicable appeals or objection process has been completed may be considered for replacement pursuant to this paragraph. The value of replacement timber or forest products may not exceed the value of the material it is replacing by more than $10,000, as determined by standard Forest Service appraisal methods.

Dated: October 12, 2007.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. E7–20625 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 72, 78, 96, and 97

[EPA–HQ–OAR–2007–0012; FRL–8483–7]

RIN 2060–A033

Revisions to Definition of Cogeneration Unit in Clean Air Interstate Rule (CAIR), CAIR Federal Implementation Plans, Clean Air Mercury Rule (CAMR); and Technical Corrections to CAIR, CAIR FIPs, CAMR, and Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Interstate Rule (CAIR), CAIR Federal Implementation Plans (FIPs), and Clean Air Mercury Rule (CAMR) each include an exemption for cogeneration units that meet certain criteria. In light of information concerning biomass-fired cogeneration units that may not qualify for the exemption due to their particular combination of fuel and technical design characteristics, EPA is changing the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, and the CAMR model cap-and-trade rule. Specifically, EPA is revising the calculation methodology for the efficiency standard in the cogeneration unit definition to exclude energy input from biomass making it more likely that units co-firing biomass will be able to meet the efficiency standard and qualify for exemption. Because this change will only affect a small number of relatively low emitting units, it will have little effect on the projected emissions reductions and the environmental benefits of these rules. If EPA finalizes the proposed CAMR Federal Plan, it intends to make the definitions in that rule conform to the CAMR model cap-and-trade rule and thus, with today's action. This action also clarifies the term "total energy input" used in the efficiency calculation and makes minor technical corrections to CAIR, the CAIR FIPs, CAMR, and the Acid Rain Program rules.

DATES: The final rule is effective on November 19, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0012. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, 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 at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning today's action, contact Elyse Steiner, Program Development Branch, Clean Air Markets Division (MC 6204J), EPA, Washington, DC 20460; telephone number (202) 343–9141; fax number (202) 343–2359; electronic mail address: *Steiner.elyse@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include the following, which were previously identified by EPA as potentially regulated or affected by CAIR, the CAIR FIPs, or CAMR:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether a facility is regulated, carefully examine the applicability provisions and definitions in CAIR, the CAIR FIPs, CAMR, and the proposed CAMR Federal Plan.[1] All references related to applicability and definitions for these rules have been provided in a single list only once and will not be referenced again in this action to avoid unnecessary repetition.

As discussed below, EPA believes that the vast majority of biomass cogeneration units are operated by the pulp and paper industry. The following table identifies NAICS codes for entities in the pulp and paper industry. This table is not intended to be exhaustive, but rather the table may help identify entities potentially affected by today's action, although today's action may affect entities in other industries in addition to pulp and paper.

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	22	Utilities.
	322	Paper Manufacturing Facilities.
	32213	Paperboard Mills.
	322122	Newsprint Mills.

[1] North American Industry Classification System.

If you have questions regarding the applicability of this action to a particular entity, consult your EPA Regional Office or EPA's Clean Air Markets Division.

Worldwide Web. In addition to being available in the docket, an electronic copy of this action will also be available on the Worldwide Web through EPA's Office of Air and Radiation. Following signature by the Administrator, a copy of this action will be posted on the CAIR and CAMR pages at *http://www.epa.gov/cair* and *http://www.epa.gov/camr*.

Outline. The information presented in this preamble is organized as follows:

[1] All applicability provisions and definitions can be found in the CFR or FR in the following locations: for CAIR and the CAIR model cap-and-trade rules, 40 CFR 51.123, 51.124, 96.102, 96.104, 96.202, 96.204, 96.302, and 96.304; for the CAIR FIP, 40 CFR 97.102, 97.104, 97.202, 97.204, 97.302, and 97.304; for CAMR and the CAMR model cap-and-trade rule, 40 CFR 60.24(h)(8), 60.4102, and 60.4104; and for the proposed CAMR Federal Plan, Proposed § 62.15902 and § 62.15904.

I. Background

A. Summary of This Action

In this rule, EPA is revising the definition of the term "cogeneration unit" in CAIR, the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, and the CAMR Hg model cap-and-trade rule, and announcing its intention to use this revised definition in the CAMR Federal Plan if it is finalized. The CAIR model cap-and-trade rules and the CAIR FIPs apply to large fossil-fuel fired electric generating units with certain exceptions. The CAMR, CAMR Hg model cap-and-trade rule, and proposed CAMR Federal Plan address large coal-fired electric generating units with certain exceptions. The CAIR model cap-and-trade rules, CAIR FIPs, CAMR and CAMR Hg model cap-and-trade rule, and proposed CAMR Federal Plan all provide an exemption for cogeneration units meeting certain requirements. All four rules provide that in order to qualify for this exemption, a unit must, among other things, meet the definition of cogeneration unit in the rule. As finalized in all three rules and as proposed in the CAMR Federal Plan, a unit cannot meet the definition unless it meets a specified efficiency standard, i.e., the useful power plus one-half of useful thermal energy output of the unit must equal no less than a certain percentage of the total energy input or, in some cases, useful power must be no less than a certain percentage of total energy input. If a unit meets the definition of a cogeneration unit including the efficiency standard, then the unit may qualify for the exemption in these rules depending on whether it meets additional criteria. The efficiency standard, as originally written, was applied to all energy input to the unit regardless of fuel type. The criteria for qualifying as a cogeneration unit are discussed in more detail below.

On August 4, 2006 EPA published a Notice of Data Availability for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plans Trading Programs (CAIR FIPs NODA) and accepted objections to the data through an electronic docket (71 FR 44283). During the period for submitting objections concerning the CAIR FIPs NODA, EPA received information concerning the application of the efficiency standard in the cogeneration unit definition (as defined in the CAIR FIPs) to biomass-fired cogeneration units and a request to extend the period for objections. Subsequently, EPA extended the period for objections—only for objections related to biomass cogeneration units—to June 1, 2007 (72 FR 7654).

EPA treated the information that the Agency received concerning the application of the efficiency standard in the cogeneration unit definition to biomass-fired cogeneration units as a request for rulemaking to change the efficiency standard in the cogeneration unit definition and, in light of that information, proposed to revise the efficiency standard in the cogeneration unit definition in the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan, so that, for boilers, energy input from only fossil fuel would be included in the efficiency calculation. EPA also took comments on excluding biomass fuel from the efficiency standard specifically, rather than only including fossil fuel input (72 FR 20471). The newly revised cogeneration unit definition is discussed in more detail in section II of today's preamble, below.

This action also makes technical corrections to CAIR, CAIR Federal Implementation Plan, CAMR, and the Acid Rain Program rules.

B. Background on CAIR, the CAIR FIPs, CAMR, and the Proposed CAMR Federal Plan

CAIR and the CAIR FIPs

On May 12, 2005, EPA published CAIR as a final rule entitled, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_X SIP Call" (70 FR 25162). CAIR requires reductions of NO_X and/or SO_2 emissions that contribute significantly to nonattainment and maintenance problems in downwind States with respect to the national ambient air quality standards for fine particulate matter ($PM_{2.5}$) and 8-hour ozone to be made across 28 eastern States and the District of Columbia. The reductions are required in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter).

States must develop State Implementation Plans (SIPs) to achieve the emission reductions required by CAIR. Each State may determine what measures to adopt to achieve the necessary reductions and which sources to control. One option is to control certain electric generating units. In CAIR, EPA provided model SO_2 and NO_X cap-and-trade programs, covering fossil-fuel-fired electric generating units that States can choose to adopt to meet the emission reduction requirements in a flexible and highly cost-effective manner.

On April 28, 2006, EPA published the FIPs for CAIR as part of a final rule entitled, "Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program" (71 FR 25328). The CAIR FIPs were promulgated for all 28 States and the District of Columbia covered by CAIR and will ensure that the required emission reductions are achieved on schedule. As the control strategy for the FIPs, EPA adopted the model SO_2 and NO_X cap-and-trade programs for electric generating units that EPA provided in CAIR as a control option for States, with minor changes to account for Federal, rather than State, implementation. Following approval of a full SIP revision that meets with the requirements of CAIR, EPA intends to withdraw the FIPs for that State.

CAMR and the Proposed CAMR Federal Plan

On May 18, 2005, EPA published the CAMR as a final rule entitled "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule" (70 FR 28606). CAMR established standards of performance for mercury for new and existing coal-fired electric generating units and requires mercury reductions nationwide. The reductions are required in two phases. The first phase starts in 2010 (covering 2010–2017); the second phase starts in 2018 (covering 2018 and thereafter).

States must develop State Plans to achieve the mercury emission reductions required by CAMR and have flexibility to determine what measures to adopt to achieve the necessary reductions. Unlike CAIR, under which States may choose which sources to control, CAMR requires that States control mercury emissions from coal-fired electric generating units. In CAMR, EPA provided a model Hg cap-and-trade program covering coal-fired electric generating units that States can choose to adopt to meet the emission reduction requirements.

On December 22, 2006, EPA published a proposed Federal Plan for CAMR in a proposed rule entitled, "Revisions of Standards of Performance for New and Existing Stationary

Sources; Electric Utility Steam Generating Units; Federal Plan Requirements for Clean Air Mercury Rule; and Revisions of Acid Rain Program Rules" (71 FR 77100). The CAMR Federal Plan was proposed to implement the standards of performance for coal-fired electric generating units located in all States, the District of Columbia, and Indian Country covered by CAMR (*See* 40 CFR 60.24(h)(1) listing the jurisdictions covered by CAMR) to ensure that the required emission reductions are achieved on schedule. As the control strategy for the Federal Plan, EPA proposed to adopt the model Hg cap-and-trade program for coal-fired electric generating units that EPA provided in CAMR as a control option for States, with minor changes to account for Federal, rather than State, implementation. EPA will not adopt the Federal Plan for any State for which EPA has approved a State Plan that meets the CAMR requirements before EPA promulgates the final Federal Plan. If EPA finalizes the Federal Plan, it will withdraw the Federal Plan promulgated for any State after the Agency approves a State Plan that meets the CAMR requirements for that State. EPA will similarly withdraw the Federal Plan upon its approval of a Tribal Plan.

C. Applicability Provisions for Cogeneration Units

Applicability determinations under the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, the CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan all turn, essentially, on whether a unit is an electric generating unit. The CAIR model cap-and-trade rules and the CAIR FIPs have applicability provisions that cover certain fossil-fuel-fired units while CAMR, the CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan use a similar definition that covers certain coal-fired units.

The CAIR model cap-and-trade rules and the CAIR FIPs apply to large fossil-fuel fired electric generating units with certain exceptions. The CAMR, the CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan apply to large coal-fired electric generating units with certain exceptions. The CAIR model cap-and-trade rules, CAIR FIPs, CAMR, the CAMR Hg model cap-and-trade rule, and proposed CAMR Federal Plan all provide that certain units meeting the definition of a "cogeneration unit" may be excluded from the definition of "electric generating unit," or from the applicability provisions of the trading programs, and therefore may be exempt from the requirements of the rules (These rule provisions are commonly referred to as the cogeneration unit exemption). The cogeneration unit exemption is essentially the same under all of these rules. In order to qualify for the cogeneration unit exemption in these rules, the cogeneration unit must meet the following electricity sales criteria: A cogeneration unit qualifies for the exemption if the unit supplies in any calendar year no more than 1/3 of its potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. In order to be a cogeneration unit, a unit must have equipment used to produce electricity and useful thermal energy through sequential use of energy and must meet a specified efficiency standard, i.e., the useful power plus one-half of useful thermal energy output of the unit must equal no less than a certain percentage of the total energy input or, in some cases, useful power must be no less than a certain percentage of total energy input. If a unit meets the definition of cogeneration unit including the efficiency standard, then it may qualify for the cogeneration unit exemption in these rules depending on whether it meets additional criteria concerning the amount of electricity sales from the unit. As originally written in these rules, the efficiency standard in the cogeneration unit definition applied to all energy input to the unit regardless of fuel type. That part of the cogeneration unit definition has been revised by today's action. If EPA finalizes the proposed CAMR Federal Plan, it intends to make the same revision in that rule.

CAIR and the CAIR FIPs

As originally issued, CAIR, the CAIR model cap-and-trade rules, and the CAIR FIPs defined "cogeneration unit" as a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.[2]

Today's action modifies this definition of "cogeneration unit" to exclude energy input from biomass for existing and future boilers and provides a more specific definition of "total energy input" to be used in calculating thermal efficiency.

CAMR and the Proposed CAMR Federal Plan

With certain exceptions, CAMR defines electric generating unit (EGU) as a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the later of November 15, 1990 or the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

The definition of "cogeneration unit" in CAMR, the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan, as originally issued, was identical to the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, and the CAIR FIPs, except that the definition in the CAMR and related rules referred to stationary, coal-fired boilers or stationary, coal-fired combustion turbines where the definition in the CAIR-related rules refers to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines.

If a unit meets the criteria concerning service of a generator (and so would otherwise be an electric generating unit) but qualifies as a cogeneration unit, then the unit may be excluded from the definition of electric generating unit, and as a result, excluded from the applicability provisions of the trading programs, and thus excluded from the regulatory requirements of the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR and the CAMR model cap-and-trade rule, and the proposed CAMR Federal Plan. In order to qualify for this

[2] Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

exemption under these rules, the cogeneration unit must meet certain additional criteria. Specifically, as discussed above, a cogeneration unit qualifies for the exemption if the unit supplies in any calendar year no more than 1/3 of its potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

D. Reason for Changing Definition for Cogeneration Units

As noted above, the definition of "cogeneration unit" in CAIR, the CAIR model rules, the CAIR FIPs, CAMR and the CAMR model rule, contains an efficiency standard. The purpose of this efficiency standard in the cogeneration unit definition is to prevent a potential loophole where a unit might send only a nominal or insignificant amount of thermal energy to a process and not achieve significant efficiency gains through cogeneration, but still qualify as a cogeneration unit and potentially qualify for the cogeneration unit exemption discussed above.

During the period for submitting objections concerning the CAIR FIPs NODA, EPA received information from commenters that suggested to EPA that the efficiency standard in the definition of cogeneration unit should be revised with regard to units co-firing biomass. The commenters also submitted information concerning the application of the efficiency standard to biomass-fired cogeneration units and stated that the existing rule "unfairly penalizes co-generation units that burn significant amounts of biomass." The information indicates that many biomass cogeneration units may be unable to meet the efficiency standard because "biomass, when burned as a fuel, has a lower thermal efficiency for conversion to steam than fossil fuels, such as coal, oil and natural gas."

Previously, in developing CAIR, EPA indicated that it expected "most back pressure units burning * * * biomass to meet the efficiency standard" (*see* Technical Support Document (TSD) for CAIR on Cogeneration Unit Efficiency Calculations).[3] The Agency believed at the time that most biomass cogeneration units would meet the efficiency standard, and thus would be potentially exempt cogeneration units. EPA has since re-examined whether the efficiency standard is appropriate for all biomass-fired cogeneration units.

EPA believes that the vast majority of existing biomass cogeneration units are operated by the pulp and paper industry.[4] The biomass fuels typically fired by pulp and paper units are wood-based biomass and black liquor.[5] Both biomass fuels have relatively high moisture content that prevents them from burning as efficiently as coal and other fossil fuels. The moisture content of these biomass fuels can range from approximately 40 to over 60 percent. In comparison, the moisture content of bituminous coal is relatively low, less than 10 percent. Higher moisture content requires that more of the heating value of the fuel goes into evaporating that moisture during combustion. The evaporated moisture (and the heat used to evaporate it) escapes up the stack—subtracting from the efficiency of the unit. Therefore, the higher the moisture content in the biomass and the higher the proportion of biomass fuel used, the more difficult it will be for a unit to meet the efficiency standard in the cogeneration unit definition. Conversely, the greater the amount of heat input from fossil fuels. the easier it is for a unit to meet the efficiency standard because of the reduced need for energy to heat and vaporize the moisture in the fuel.

Certain additional factors may also contribute to lower efficiencies for existing biomass cogeneration units in the pulp and paper industry. EPA believes that, as compared to large electric power plants that are optimized for power generation, many of the existing process-optimized units in the pulp and paper industry use significantly lower design steam pressure and temperature conditions at the steam turbine inlet. For example, a large power plant turbine might be designed to use steam at 2,400 psig and 1,000 °F, whereas a steam turbine generator in a pulp and paper plant might be using steam at conditions below 900 psig and 800 °F. These lower steam conditions reduce the efficiency of the overall cogeneration cycle, which was optimized for process needs, not for electric power generation. Moreover, some steam turbine generators in the pulp and paper industry have been installed by retrofit—a circumstance that may have exacerbated the problem because the boiler was designed before cogeneration by the unit was contemplated and thus before the impact of the design on thermal efficiency became a consideration.

In addition, existing biomass cogeneration units (boilers and steam turbines) in the pulp and paper industry generally are relatively small, and smaller units are typically less efficient than larger units. The existing smaller units generally do not incorporate high-efficiency design practices and their energy losses (such as radiation loss for a boiler and mechanical loss for a steam turbine-generator set) per unit of energy input are inherently higher. The combination of relatively high fuel moisture content and small boiler size results in efficiencies as low as 60 percent for the biomass boiler itself, compared to typical large fossil fuel-fired boiler efficiencies ranging to above 85 percent.

In summary, EPA believes that biomass cogeneration units as a group have a particular set of characteristics that together may make it difficult for many units to meet the efficiency standard in the cogeneration unit definition unless the units co-fire significant amounts of fossil fuel, such as coal. These characteristics are: fuels with relatively high moisture content, units designed for relatively low pressure and temperature conditions for industrial processes, and relatively small boilers and steam turbines that are inherently less efficient due to their size. EPA recognizes that there are some existing biomass cogeneration units (e.g., those that co-fire coal, natural gas, or oil for a large portion of their heat input) that might be able to meet the efficiency standard, as discussed in the following section.

The cogeneration unit definition finalized in the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, the CAMR Hg model cap-and-trade rule and in the proposed CAMR Federal Plan includes all energy input in the efficiency calculation. EPA believes that the inclusion of energy input from all fuels—rather than from all fuels except biomass—has the unanticipated and unintended consequence of making it very difficult for existing biomass cogeneration units to qualify as cogeneration units unless they co-fire significant amounts of fossil fuel, such as coal. Preventing these existing units from qualifying as cogeneration units is not consistent with the purposes of the efficiency standard. These units were originally designed to, and still do, produce significant amounts of useful thermal energy (relative to their total energy output) and to achieve efficiency gains over non-cogeneration units. Under these circumstances, application of the original efficiency standard to existing biomass cogeneration units does not seem to promote the purposes

[3] Cogeneration Unit Efficiencies Calculation, March 2005. OAR–2003–0053–2087 *http://epa.gov/cair/pdfs/tsd_cogen.pdf.*

[4] The pulp and paper industry raised concerns regarding biomass cogeneration units during the period for objections to the CAIR FIPs NODA.

[5] Black liquor is spent pulping liquor, a byproduct of a pulping process used to separate the wood fibers used in papermaking from lignin and other wood solids.

of the standard. In addition, application of this standard as originally written had the paradoxical result that existing biomass cogeneration units burning greater amounts of fossil fuels (therefore likely having greater emissions) were much more likely to meet the efficiency requirement and thus qualify as cogeneration units exempt from emission limits under the CAIR model cap-and-trade programs and CAMR model cap-and-trade rule, while existing biomass cogeneration units burning less coal (therefore likely having lower emissions) were less likely to meet the requirement and qualify for the exemption.

For these reasons, EPA is revising the efficiency standard in the cogeneration unit definition such that energy input from biomass fuels only may be excluded from the total energy input used to calculate efficiency for cogeneration units. The final change is discussed in more detail below.

II. EPA's Final Action and Its Impacts

A. Final Change for Cogeneration Units

EPA is revising the efficiency standard in the cogeneration unit definition in CAIR, the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR and the CAMR model cap-and-trade rule to permit boilers to exclude energy input from biomass fuels in the efficiency calculation rather than include energy input from all fuels. EPA also intends to use this revised definition if it finalizes the CAMR Federal Plan. This revised definition will make it more likely that units burning biomass and cogenerating electricity and useful thermal energy will meet the efficiency standard and qualify as exempt cogeneration units under these rules.

EPA has decided to revise the efficiency standard in the cogeneration unit definition to specifically exclude heat input from biomass fuel, rather than exclude all non-fossil fuel input. This approach was offered as an alternative from the main approach EPA proposed, which would have excluded heat input from any non-fossil fuel in the efficiency calculation. EPA explicitly requested comment on this alternative and, after considering the comments, decided that it was preferable to exclude only heat input from biomass fuels. This preferred approach more narrowly limits the exclusion of heat input from the non-fossil fuel (i.e., biomass) whose relatively high moisture content, combined with the other factors of biomass cogeneration discussed above (e.g., relatively low pressure and temperature unit design conditions and relatively small boilers and steam turbines) are the basis for EPA's revisions. Although EPA specifically requested comment concerning cogeneration units burning other identifiable types of non-fossil fuels and their characteristics, little additional information was received. The comments that were received provided neither adequate information about the composition and moisture content of other non-fossil fuels nor data on what type or how many units combust these other fuels. Information in the record provides no basis for determining that combustion of any non-fossil fuel other than biomass involves the particular combination of characteristics upon which the exclusion of biomass heat input in boilers is based or any other characteristics on which an expansion of the exclusion of heat input to other non-fossil fuels could be based. For these reasons, EPA is limiting the exclusion for boilers to heat input from biomass fuel only. This approach avoids expanding the change to the cogeneration unit exemption to units that cogenerate but combust other non-fossil fuels for which there is no basis in the record for excluding the heat input of such fuels from the efficiency calculation.

With today's rule change, the efficiency calculation will be based on total energy input excluding input from biomass fuel. EPA requested comment on the definition of the term "biomass" that would be used solely for the purpose of identifying fuels excluded from heat input calculations covered by this rulemaking. Commenters provided a number of alternative suggestions to define the term "biomass" in response to EPA's request for input. EPA considered the various definitions and has determined that the following definition of "biomass" derived largely from the "biomass" definition in Section 932 of the Energy Policy Act of 2005 is appropriate for this action. The definition of "biomass" adapted in today's action depicts biomass as an energy source and an important renewable fuel supply. EPA notes that it is adopting this biomass definition only for purposes of the cogeneration definition in CAIR, CAMR and other related rules addressed in this rulemaking. It may not be the appropriate definition in other contexts or other rules. For the purposes of the cogeneration unit definition addressed in this rulemaking, the term "biomass" means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy;

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from nonmerchantable material, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

EPA received a few comments expressing the view that EPA should not change the existing cogeneration unit definition for any units in order to more effectively protect the environment and human health. These comments asserted that the revision of the definition would have adverse impacts on the environment or human health. However, the commenters did not provide any support for these assertions. Commenters did not dispute EPA's reasons for making the change based on technical differences, fuel characteristics, and equipment design decisions. EPA examined the potential impacts of the revision and, as discussed below, determined that the estimated change in SO_2, NO_X, and Hg emissions due to this rule change is very small compared to the overall emission cap levels. For these reasons, EPA believes that the change in the cogeneration unit definition adopted in this rule is reasonable.

The change to the efficiency standard made in today's rule will apply both to existing units and to new units that are constructed in the future. In the Notice of Proposed Rulemaking, EPA proposed to apply the revised standard only to existing units, but it also solicited comments on whether the efficiency standard should be applied to all units regardless of when construction on the unit commenced. After considering comments received, EPA has determined that it is appropriate to apply the revised efficiency standard to both existing and new units.

EPA received several comments in support of revising the cogeneration unit definition for all units that co-fire biomass regardless of the date that they commenced construction based on the assertion that new units will face the same difficulties meeting the original efficiency standard as existing units. EPA notes that existing biomass-fired boilers do not generally operate as stand-alone units, but rather are

generally part of an integrated facility that may include several boilers, common headers, and several steam turbine generators. Similarly, new biomass boilers are likely to be constructed to fit into an existing configuration of boilers and stream turbine generators. Consequently, even if new, stand-alone biomass boilers might theoretically be able to meet the original efficient standard, they are likely to be integrated with existing equipment, rather than operate as stand-alone equipment that can be designed without the limitations on efficiency that apply to existing boilers.

EPA's previous analysis did not take this into account. Moreover, the combustion technology used in existing and new boilers is essentially the same. Therefore, many of the same factors (i.e., high moisture fuel, low pressure and temperature conditions, and small boilers and steam turbines) that make it difficult for existing biomass boilers to meet the original efficiency standard may well apply to new biomass boilers, whose design is limited by the need to be integrated into an existing facility. Because of the absence of information in the record about the design attributes of new biomass units that would support distinguishing between existing and new biomass boilers, EPA has decided to adopt the revised cogeneration unit definition for all boilers, regardless of their construction date. Further, this approach eliminates the need for a clear-cut distinction between new and existing units, which commenters noted could be complex and problematic, and may avoid discouraging the construction of new biomass cogeneration units and the increased use of biomass fuel for cogeneration. However, today's revision to the definition for all cogeneration units in CAIR and CAMR does not in any way change the meaning of the term "cogeneration" or any other provisions in the NSPS (*See* 40 CFR 60.41Da).

Under the revised cogeneration unit definition, "cogeneration unit" is defined, with regard to boilers, as a stationary, fossil-fuel-fired boiler (for the CAIR model rules and the CAIR FIPs) or stationary, coal-fired boiler (for CAMR, the CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan if it is finalized):

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input from all fuel other than biomass, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input from all fuel other than biomass, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input from all fuel other than biomass.

The revised definition does not apply to combustion turbines which combust gaseous fuel. For combustion turbines, the cogeneration unit definition—and the efficiency standard in particular—would remain as finalized in the CAIR model rules, the CAIR FIPs, CAMR, and the CAMR Hg model cap-and-trade rule and will not be revised in the CAMR Federal Plan, if finalized. Although EPA received some comments suggesting that the revised cogeneration unit definition should be extended to combustion turbines, EPA maintains that these comments are beyond the scope of this rulemaking. In the Notice of Proposed Rulemaking, EPA stated that it was proposing to apply the revised definition only to boilers, not to combustion turbines (See 72 FR 20471). Moreover, consistent with this, the record for the proposal did not include any information about combustion turbines burning biomass. EPA notes that, in order to be burned in a combustion turbine, the biomass first must be gasified, and the integration of biomass gasification with electric and steam generation by combustion turbines involves significantly different technology than that used in biomass-fired boilers. Consequently, the information concerning biomass boilers is not necessarily relevant to biomass combustion turbines. Under these circumstances, the comments supporting extension of the revised definition to combustion turbines are beyond the scope of the rulemaking.

In addition, the commenters provided little or no information indicating whether biomass combustion turbines would have problems in meeting the efficiency standard and, if so, what would be the nature and extent of the problems and whether the problems would be the same as those for biomass boilers. In fact, EPA believes that there are currently no combustion turbines of this type in commercial use to serve as a basis for analysis of the likely characteristics and thermal efficiency of this type of unit. EPA, therefore, is not extending the revised cogeneration unit definition to turbines both because the comments are beyond the scope of the rulemaking and because there is essentially no record evidence concerning whether this type of unit would have difficulty meeting the original efficiency standard. Consistent with the proposal, EPA is finalizing this rule with the revised cogeneration unit definition applying only to boilers, not combustion turbines. The issue of revising the definition with regard to combustion turbines may be raised in the future if biomass combustion turbines are developed and built in the future and are shown to have difficulty meeting the efficiency standard.

B. Emissions Impact of This Action

During development of the proposal, EPA analyzed the emissions impact of the proposed action using the methodology explained below. For this analysis, EPA used Energy Information Administration (EIA) data because detailed EPA data was not available. For the CAIR model rules and the CAIR FIPs, EPA generated an inventory of biomass cogeneration units that serve generators with nameplate capacity greater than 25 MW in CAIR states and then looked for units that would potentially be affected by a change in the efficiency standard and estimated the SO_2 and NO_X emissions. For CAMR and the proposed CAMR Federal Plan, using EIA data EPA generated an inventory of cogeneration units burning both coal and biomass that serve a generator with nameplate capacity greater than 25 MW in CAMR states nationwide, and tried to identify units that might be affected and estimated the Hg emissions.[6]

After publishing its biomass cogeneration unit inventories which identified units potentially affected by the proposed rule change, EPA received additional information from commenters about some of the units already on the list and about four additional units that have since been included in the list. EPA updated its inventory based on the input from American Forest and Paper Association's (AF&PA) member survey, and the results are summarized below in

[6] Technical Support Document: Methodology for Thermal Efficiency and Energy Input Calculations and Analysis of Biomass Cogeneration Unit Characteristics. EPA–HQ–OAR–2007–0012–0004.1

Table II–1.[7] For more information about how EPA identified biomass cogeneration units for the initial proposal analysis, refer to the proposal and its Technical Support Document (TSD), "Methodology for Thermal Efficiency and Energy Input Calculations and Analysis of Biomass Cogeneration Unit Characteristics" (April 2007).

As shown in Table II–1, emissions from units whose status under the CAIR model rules or the CAIR FIPs may be affected by the rule change are estimated to be on the order of 15,000 and 20,000 tons per year for SO_2 and NO_X, respectively. These emissions are quite small compared to the size of the region-wide emission caps under CAIR, which are 1.5 and 1.3 million tons of NO_X for the first and second phases of the annual NO_X program, respectively, and 3.7 and 2.6 million tons of SO_2 for the first and second phases of the SO_2 program, respectively (i.e., for NO_X, about 1.3 percent of the phase I cap and 1.5 percent of the phase II cap, and for SO_2 about 0.4 percent of the phase I cap and 0.6 percent of the phase II cap).[8]

Emissions from units whose status under CAMR, the CAMR Hg model cap-and-trade rule, or the proposed CAMR Federal Plan may be affected by the rule change are estimated to be on the order of 0.02 tons of Hg per year. These emissions are very small compared to the size of the nationwide emission caps under CAMR which are 38 and 15 tons of Hg for the first and second phases, respectively (i.e., less than 0.1 percent of the phase I cap and about 0.1 percent of the phase II cap).

Another way to look at the magnitude of emissions represented by units that may be affected by today's rule change is to compare emissions from this group of units to emissions from biomass cogeneration units that we assumed were already exempt because they could meet the efficiency standard as previously written. Table II–2 shows estimated annual NO_X, SO_2, and Hg emissions for this group of units. (Note that this group excludes units that reported to EIA that they do not have the ability to sell power to the grid and units that reported the ability to sell power and whose historic sales exceed the electricity sales threshold for the exemption.) As shown in the table, the emissions from the group of units whose regulatory status we believe may change under today's rule change are considerably less than emissions from the group of biomass cogeneration units which we believe were already exempt from these rules because they meet the efficiency standard as previously written.

EPA's analysis also suggests that, on average, the estimated emissions per unit are lower from the group whose regulatory status we believe may change compared to the group of units we believe were already exempt from these rules because they can meet the efficiency standard as previously written. It is expected that emission rates at units burning proportionally more biomass—which is the group whose regulatory status we believe will change—will generally be lower than emission rates at units burning less biomass.

It is important to note that EPA emissions estimates in Tables II–1 and II–2 are based on a combination of EPA estimates and AF&PA member survey data concerning units that EPA anticipates may be affected by the rule change.

TABLE II–1.—ESTIMATE OF BIOMASS COGENERATION UNITS POTENTIALLY EXCLUDED FROM CAIR AND CAMR BY THE RULE CHANGE AND ESTIMATE OF THEIR EMISSIONS

	CAIR NO_X	CAIR SO_2	CAMR Hg
Estimated number of units potentially affected by the rule change	39	39	5
Estimated annual emissions from units potentially affected by the rule change (tons)	19,800	14,900	0.02 (40 lbs)

TABLE II–2.—ESTIMATE OF BIOMASS COGENERATION UNITS ASSUMED EXCLUDED FROM ORIGINAL CAIR AND CAMR AND ESTIMATE OF THEIR EMISSIONS

	CAIR NO_X	CAIR SO_2	CAMR Hg
Estimated number of units assumed to meet efficiency standard as written	54	42	30
Estimated annual emissions from units assumed to meet the efficiency standard as written (tons).	29,700	59,800	0.24 (480 lbs)

Finally, units that might become exempt cogeneration units as a result of today's rule changes may be required to make emission reductions under programs other than CAIR or CAMR. These units will need to work with permitting authorities to determine whether they must comply with other regulatory rules.

C. State Emissions Budgets

EPA did not propose to change the NO_X, SO_2, or Hg State emission budgets under CAIR and CAMR, and is not changing those budgets in this final action. As discussed above, the estimated amount of emissions from units potentially affected by today's action is minimal compared to the size of the applicable region-wide (CAIR) and nationwide (CAMR) caps. Further, none of the units that EPA has identified as potentially affected by the rule change were included in the state budget calculations, as explained below.

In addition, States have made significant progress toward the implementation of CAIR and CAMR based on the emission budgets that were established in those rules. Proposing and finalizing revised State emission budgets would take substantial effort by many States and EPA and considerably delay CAIR and CAMR implementation. The CAIR emission budgets are in 40 CFR 51.123(e)(2) and (q)(2) and 51.124(e)(2) and CAMR emission budgets are in 40 CFR 60.24(h)(3).

[7] Comment attachment submitted by Timothy G. Hunt, Senior Director, Air Quality Programs, American Forest and Paper Association (AF&PA). EPA–HQ–OAR–2007–0012–0014.1

[8] Arkansas is included in CAIR for the ozone-season NO_X program only, not for the annual NO_X and SO_2 programs. Because these NO_X emission estimates include annual NO_X emissions for units in Arkansas, the estimates slightly overstate the potential impact of the final rule change for units in Arkansas.

Discussion of development of the CAIR and CAMR State emission budgets are in 70 FR 25162 and 70 FR 28606, respectively.

Although EPA did not propose to change any state budgets in this action, the Agency did request comment on changing the budgets to reflect the proposed changes in the definition of cogeneration unit. EPA received some comments arguing that the state budgets should be reduced because more units may qualify for the cogeneration unit exemption. These comments did not provide specific suggestions regarding how the budgets should be reduced. Presumably, they would advocate eliminating any units from the budgets that were covered under the original rules but that qualify for exemption under this revision to those rules. However, upon closer inspection, none of the units expected to be affected by this change to the efficiency standard are among the CAIR and CAMR units included in the heat input inventories that were used to develop state budgets.[9] All of the biomass cogeneration units in the heat input inventories either (1) meet the original efficiency standard already based on EPA's analysis, (2) do not sell power to the grid based on available data, or (3) do not qualify for the cogeneration unit exemption because they exceed the limitation on electricity sales. In other words, since none of the units that EPA has identified as potentially affected by the rule change were even included in the state budget calculations to begin with, EPA has determined that it is not appropriate or necessary to recalculate the budgets. Therefore, and for the reasons discussed above in this section, EPA concludes that state budgets should not be recalculated. Finally, EPA will not be decreasing or increasing overall emissions cap levels or state budgets in response to any units (biomass or otherwise) that qualify or do not qualify for the cogeneration unit exemption at this late stage in the implementation of CAIR and CAMR.

D. Impact of This Action on CAIR and CAMR Implementation

In the proposal, the Agency recognized that finalizing this change in the cogeneration unit definition and in the applicability provisions of the CAIR model rules and CAMR and the CAMR Hg model cap-and-trade rule would require States to change CAIR SIPs and CAMR State Plans and that States have already made significant progress in developing these plans. In that context, the Agency has carefully considered the timing of the regulatory action in relation to the implementation timeline. The Agency understands that there may be implementation concerns regarding this action and requested comments on implementation concerns from the States.

After considering comments received, EPA is finalizing a change to the cogeneration unit definition in the model trading rules and is setting a time frame within which States wanting to participate in the EPA-administered trading programs must revise their existing cogeneration unit definition to be the same as in the revised EPA rules. EPA will change the cogeneration unit definition in the CAIR model cap-and-trade rule, CAIR FIPs, and CAMR model cap-and-trade rule to reflect today's changes, and intends to change it if the Agency finalizes the CAMR Federal Plan.

In the proposal, EPA requested comments on an alternative option whereby the Agency would modify CAIR to allow States intending to join the EPA-administered CAIR trading programs to choose which cogeneration unit definition to use. After considering the comments received, EPA has decided to require all CAIR states to change their rules so that definitions remain consistent across the CAIR region and consistent with CAMR regardless of whether they have existing biomass cogeneration units affected by this action. Whether or not a State has existing units affected by the revised definition, new units may be constructed in the future that may be affected. Therefore, EPA concludes that having uniform applicability provisions (including the definition of cogeneration unit) makes the CAIR trading program easier to administer and has the equitable result that the same types of facilities are covered in all States in the trading programs.

In addition, EPA does not believe this will impose an undue burden on States because under this final action, all States will already have to go through the rulemaking process to incorporate other technical revisions related to the thermal efficiency standard (i.e., revisions to the definition of "total energy input") for all cogeneration units (discussed below in Section III) and to make the necessary efficiency standard changes to CAMR for biomass cogeneration units. With regard to CAMR, EPA does not permit States to decide which definition of cogeneration unit to use for State Plans under CAMR. Because CAMR specifies the category of units from which States must obtain emission reductions (i.e., coal-fired electric generating units as defined in the rule), CAMR, all State Plans, and the CAMR Federal Plan, if finalized, must have the same cogeneration unit definition.

EPA realizes that some States may have allocated allowances to cogeneration units that might not be required to hold allowances as a result of today's final action. The Agency believes that this could be addressed by the State's SIP revision or State Plan. For example, the SIP revision or State Plan adopting revisions making some units exempt from the allowance-holding requirement could require these units to surrender their allocations for inclusion in the State's new unit set-aside. If the State requires the unit to surrender their allocations, the SIP revision or State Plan should indicate how allowances would be handled. Note that a State could also choose to adopt this rule change but not to require the units to surrender allowances even though the units are no longer covered by the rule.

EPA will continue to review SIPs and State Plans submitted with the original cogeneration unit definition and efficiency standard and, at this time, will not disapprove any plan based solely on the absence of the changes in today's rule. As explained above, States are still required to complete the rulemaking process to revise their SIPs and State Plans to incorporate the clarifying change to the thermal efficiency standard and total energy input calculations for all cogeneration units in addition to making the necessary cogeneration unit definition changes as they apply to units that co-fire biomass. Specifically, with regard to CAIR SIPs, EPA is taking the approach of setting a deadline for States to adopt the revisions to the cogeneration unit definition and the efficiency standard finalized in today's rule. In order to give States time to adopt these revisions, EPA is not requiring that CAIR SIPs providing for participation in the appropriate EPA-administered trading programs to include the revisions until January 1, 2009. This means that, for purposes of reviewing and approving such a CAIR SIP before January 1, 2009, EPA will not disapprove any plan based solely on the absence of the changes in today's rule. However, any CAIR SIP providing for participation in an EPA-administered trading program that is not approved before January 1, 2009 must include the revisions in order to be subsequently approved and any such CAIR SIP that is approved before

[9] Data for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs. EPA–HQ–OAR–2004–0076–0230 CAMR Unit Hg Allocations (*http://www.epa.gov/ttn/atw/utility/final_camr_unithgallo_oar-2002-0056-6155.xls*)

January 1, 2009 without the revisions must be revised by January 1, 2009 to include the revisions.

With regard to CAMR State Plans, EPA is taking the approach set forth in 40 CFR 60.23(a), which includes general procedures for incorporation in State Plans of revisions of EPA requirements for such plans. Under 40 CFR 60.23(a), when the requirements for State Plans are revised, a State must adopt and submit a revised State Plan consistent with the revised requirements within nine months after the revised requirements are published or within such other period specified by the Administrator. In order to give States time to adopt the revisions to the cogeneration unit definition and the efficiency standard finalized in today's rule, EPA is setting a deadline under 40 CFR 60.23(a) of January 1, 2010 for adoption and submission of revised CAMR State Plans (whether or not they involve participation in the EPA-administered Hg trading program) that include these revisions.

III. Calculating Thermal Efficiency and Total Energy Input

Today's action also adopts revisions to the definition of "total energy input," a term which is used in calculating thermal efficiency of a unit. These minor technical revisions will help regulatory authorities, owners, and operators determine whether the unit qualifies for the cogeneration unit exemption in CAIR, the CAIR model cap-and-trade rules, the CAIR FIPs, CAMR, the CAMR Hg model cap-and-trade rule, and the proposed CAMR Federal Plan.

In the proposal, EPA requested comments on revising the efficiency standard, or the definition of "total energy input," to specify the formula for calculating a unit's total energy input (i.e., fuel heat input). The approach that EPA is adopting in today's rule applies to all efficiency calculations made to determine if a unit satisfies the efficiency standard in the cogeneration unit definition regardless of whether or not the unit excludes from its calculation the heat input from biomass fuels. However, consistent with this final action, the thermal efficiency calculation shall include in "total energy input" the energy input from all fuels combusted by the boiler, other than biomass.

A critical value used in calculating a unit's efficiency under the thermal efficiency standard in the cogeneration unit definition is "total energy input." As discussed above under the efficiency standard, a units' useful power plus one-half of useful thermal energy output must equal no less than a certain percentage of the total energy input or, in some cases, useful power must be no less than a certain percentage of total energy input. One of the first steps in determining a unit's total energy input is identifying the unit's fuel mix and the heat content or heating value of the fuel or fuels combusted by the unit. Heating value, commonly expressed in Btu, can be measured in several ways, but the most common are to use gross heat content (referred to as "higher heating value" or "HHV") or to use net heat content (referred to as "lower heating value" or "LHV"). According to the Energy Information Administration (EIA) of U.S. Department of Energy, higher heating value includes, while low heating value excludes, "the energy used to vaporize water (contained in the original energy form or created during the combustion process").[10]

The thermal efficiency standard originally adopted by EPA was based on the thermal efficiency standard adopted by the Federal Energy Regulatory Commission (FERC) in determining whether a unit is a qualifying cogeneration unit under section (3)(18)(B) of the Federal Power Act (as amended by the Public Utility Regulatory Policy Act (PURPA)). However, EPA originally decided to make the thermal efficiency standard cover all fuels combusted by a unit, while the FERC limited application of the standard to natural gas and oil (See 70 FR 25277 and 18 CFR 292.205(a)(2) and (b)(1)). In today's action, of course, the thermal efficiency standard is being revised to exclude, for boilers, heat input from biomass.

FERC's regulations that included the thermal efficiency standard stated that "energy input" in the form of natural gas and oil "is to be measured by the lower heating value of the natural gas or oil." 18 CFR 292.202(m). As explained by FERC when it adopted these regulations in 1980 (45 FR 17959, 17962 (1980)):

> Lower heating values were specified in the proposed rules in recognition of the act that practical cogeneration systems cannot recover and use the latent heat of water vapor formed in the combustion of hydrocarbon fuels. By specifying that energy input to a facility excludes energy that could not be recovered, the Commission hoped that the proposed energy efficiency standards would be easier to understand and apply.

Because the thermal efficiency standard on which EPA's thermal efficiency standard was based is premised on using lower heating value to determine total energy input, EPA interprets the thermal efficiency standard in the existing CAIR, CAIR model cap-and-trade rules, CAIR FIPs, CAMR, CAMR Hg model cap-and-trade rule, and the CAMR Federal Plan, if finalized, as similarly requiring the use of lower heating value of all fuels combusted at the unit in calculating a unit's total energy input.

Further, although FERC regulations use lower heating value to measure a unit's energy input from natural gas and oil, the regulations do not specify a formula for calculating lower heating value. EPA proposed, and is adopting as final in today's action, a revision to the total energy input definition to add a specific formula for calculating lower heating value. Under this formula, the relationship between the lower heating value of a fuel and the higher heating value of that fuel is:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb
HHV = higher heating value of fuel in Btu/lb
W = Weight % of moisture in fuel
H = Weight % of hydrogen in fuel

EPA maintains that, while FERC regulations do not include a formula for lower heating value, the above-described formula is consistent with the FERC's approach of calculating lower heating value of fuels by excluding from the higher heating value of such fuels "the latent heat of water vapor formed in the combustion of hydrocarbon fuels." (*See* 45 FR 17962). As discussed above, EPA's efficiency standard is based on the efficiency standard in FERC regulations.

Consequently, EPA interprets the existing CAIR, CAIR model cap-and-trade rules, CAIR FIPs, CAMR, CAMR Hg model cap-and-trade rule, and the CAMR Federal Plan, if finalized, to require use of this formula for calculating lower heating value for purposes of determining total energy input. EPA notes that this formula is consistent not only with the description of "lower heating value" by FERC, but also with EIA's above-discussed description of the term. EPA also notes that the formula reflects a standard approach to calculating lower heating value (See IFRF Combustion Handbook, *http://www.handbook.ifrf.net* (IFRF 1999–2000)).

In order to clarify that total energy input must be based on the lower heating value and that lower heating value must be calculated using the above-described formula EPA proposed

[10] *http://www.eia.doe.gov/glossary/glossary_h.htm.*

and is today finalizing, a revision to the total energy heat input definition to make explicit the requirement to use lower heating value calculated using this formula. The revised total energy heat input definition applies to the CAIR, CAIR model cap-and-trade rules, CAIR FIPs, CAMR (including the CAMR Hg model cap-and-trade rule), and, if finalized, the CAMR Federal Plan. These minor technical revisions to the definition clarify for regulatory authorities and unit owners and operators, the application of the cogeneration unit exemption

EPA maintains that this formula, along with the change to the efficiency standard for units burning biomass, should be more than sufficient to address the concern that the original efficiency standard unfairly penalized units firing biomass.

IV. Minor Corrections to CAIR and the Acid Rain Program Regulations

In addition to the above-described rule revisions, EPA is finalizing certain minor corrections to CAIR, the CAIR model cap-and-trade rules, and the Acid Rain Program regulations. On April 28, 2006, EPA promulgated a final rule revising several definitions used in both the CAIR and in the CAIR model cap-and-trade rules. While the rule text in the April 28, 2006 final rule incorporated the revisions to the definitions in the CAIR model cap-and-trade rules, the final rule mistakenly did not also include rule text reflecting conforming changes to the definitions of the same terms in the CAIR, i.e., to the definitions for "Allocation or allocation", "Combustion turbine", "Nameplate capacity", and "Maximum design heat input". In today's action, EPA is implementing these conforming changes in the definitions for these terms in § 51.123(cc) and (q) and § 51.124(q) for the reasons explained in the April 28, 2006 final action (*See* 71 FR 25328).

With regard to the CAIR model cap-and-trade rules, EPA finalizing a minor correction of the definition of "Permitting authority." For all States subject to CAIR, this term is intended to include the agencies authorized to issue CAIR permits under the regulations approved by the Administrator for the EPA-administered CAIR cap-and-trade programs. Some States have incorporated by reference, or intend to incorporate by reference, the permitting provisions of the CAIR model cap-and-trade rules. However, many other States have promulgated, or intend to promulgate, their own permitting provisions concerning the processing and issuing of CAIR permits under the EPA-administered cap-and-trade programs. The existing definition refers only to permitting authorities issuing CAIR permits under the permitting provisions of the CAIR model cap-and-trade rules and not to permitting authorities governed by States' own permitting provisions that may be approved into SIPs by the Administrator under CAIR. Today's correction—i.e., the elimination of the references, in the current "Permitting authority" definition, to subparts CC, CCC, and CCCC of the CAIR model cap-and-trade rules—corrects this technical problem.

With regard to the Acid Rain Program regulations, EPA is today making final minor corrections to two parts of the regulations. In Part 72, EPA is making a non-substantive correction in wording in the Certificate of Representation requirements so that the provision will have the same wording as comparable provisions in the CAIR model cap-and-trade rules. This will facilitate using a single Certificate of Representation form for all of these trading programs. In Part 78, EPA is instituting corrections that will make it clear that the administrative appeals procedures apply to all final actions of the Administrator under the EPA-administered cap-and-trade programs whether the programs are governed by the CAIR model cap-and-trade rule provisions that many States are incorporating by reference or whether the programs are governed by the State's own cap-and-trade rules approved by the Administrator.

At this time, EPA is not finalizing the change to the boiler MACT that explicitly excludes from that rule "mercury budget units covered by 40 CFR part 60, subpart HHHH" (40 CFR 63.7491(c)) that was included in the proposal. Since the proposal was published, the boiler MACT has been vacated by the court (See *Natural Resources Defense Counsel* v. *EPA*, June 8, 2007), and EPA is in the process of re-developing a new regulation in response to the court decision.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review under the EO.

This action makes relatively minor revisions to the definition of "cogeneration unit" in the CAIR model cap-and-trade rules, CAIR FIPs, CAMR, including the CAMR Hg model cap-and-trade rule. If EPA finalizes the proposed CAMR Federal Plan, it intends to make the same revisions in the final rule. It also makes some other minor, technical rule revisions to the CAIR, CAIR FIPs, CAMR, and the Acid Rain Program. For today's action, EPA is relying on the economic analysis conducted for CAIR and CAMR that are presented in the Regulatory Impact Analyses for those actions.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes relatively minor revisions to the definition of "cogeneration unit" in the CAIR model cap-and-trade rules, CAIR FIPs, CAMR, including the model cap-and-trade rule, and announces its intent to make the same revisions if it finalizes the proposed CAMR Federal Plan. It also makes some other minor, technical rule revisions to the CAIR, CAIR FIPs, CAMR, and the Acid Rain Program. The paperwork reduction requirements for this action are satisfied through the Information Collection Requests (ICRs) submitted to OMB for review and approval as part of CAIR and CAMR.

The OMB has previously approved the information collection requirements contained in the existing CAIR, and CAMR regulations (70 FR 25313, May 12, 2005, 70 FR 28643, May 18, 2005 respectively) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* For the CAIR and CAMR ICRs, OMB has assigned control numbers 2060–0570 and 2060–0567, respectively (EPA No. 2152.02 and 2137.02). A copy of the OMB approved ICRs may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if, among other possibilities, the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA is revising the thermal efficiency standard in the cogeneration unit definition, which exists in the CAIR model trading rules, CAIR FIPs, CAMR, including the CAMR Hg model trading rule, and proposed CAMR Federal Plan. As a result, some additional cogeneration units will likely be exempt from the CAIR FIPs, CAMR and the proposed CAMR Federal Plan. We have therefore concluded that the changes to the CAIR FIPs, CAMR, including the CAMR model trading rule, and the proposed CAMR Federal Plan in today's rule will not have any significant adverse impact on small entities and may relieve regulatory burden on some small entities that would have been subject to these programs in the absence of today's rule change.

CAIR and the CAIR model trading rules do not establish requirements applicable to small entities and thus a regulatory flexibility analysis is not required for the revisions to the CAIR model trading rules. CAIR requires States to submit SIP revisions to achieve the necessary emission reductions and provides model trading rules that the States may adopt to achieve these reductions. However, because States have the discretion under CAIR to choose the sources to regulate and the emissions reductions to be achieved by the regulated sources, EPA cannot predict the effect of the change to the definition in the CAIR model rules on small entities. In States that choose to adopt the model rules with the modified definition of cogeneration unit, the likely result would be the exemption of some additional cogeneration units from the EPA-administered CAIR cap-and-trade programs.

With regard to CAMR, the change to the cogeneration definition is likely to result in some additional cogeneration units becoming exempt from CAMR, as well as from the EPA-administered CAMR cap-and-trade program, including potentially some small entities. Because the change is likely to relieve regulatory burden, the change will not have a significant economic impact on a substantial number of small entities.

The other rule revisions would not make any substantive changes in the requirements of the existing rules and, therefore, would not have any potential significant impacts on small entities.

For these reasons, the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final 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 $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under UMRA section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," except for, among other things, a duty that is "a condition of Federal assistance" (UMRA section 421(5)(A)(i)(I), 2 U.S.C. 658(5)(A)(i)). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions (UMRA section 421(7)(A), 2 U.S.C. 658(7)(A)).

Before promulgating an EPA rule for which a written statement is needed under UMRA section 202, UMRA section 205, 2 U.S.C. 1535, generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

EPA prepared a written statement meeting the requirements of section 202 of UMRA for the final CAIR and CAMR rulemaking processes. Most of the changes in today's action relate to the definition of cogeneration unit, which results in a minor change in the applicability criteria for the CAIR model trading rules, CAIR FIPs, CAMR, including the CAMR model trading rule, and the proposed CAMR Federal Plan that will not significantly alter the impacts of these rules. The other rule changes would make no significant, substantive changes in the requirements of the existing rules. Thus, the analyses already prepared for CAIR and CAMR are applicable to today's action.

In summary, today's rule contains no Federal mandates for State, local, or tribal governments or the private sector because this action is likely to actually relieve regulatory burden by making more units eligible for the cogeneration unit exemption. Furthermore, as EPA stated in the final CAIR and CAMR, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under UMRA section 203 a small government agency plan. Furthermore, in a manner consistent

with the intergovernmental consultation provisions of UMRA section 204, EPA carried out consultations with the governmental entities affected by this rule.

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 EO 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 rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, EO 13132 does not apply to this final rule.

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 final action does not have tribal implications as specified in EO 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under EO 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule would result in little change in emissions levels and the environmental benefits projected in the final CAIR and CAMR because the likely effect of the rule would be to exempt a small number of units with a very small amount of emissions compared to the overall emissions caps. The health and safety risks are essentially unchanged from those analyzed in CAIR, the CAIR FIPs, CAMR, and the proposed CAMR Federal Plan.

H. Executive Order 13211: Actions Concerning Regulations 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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

This final action does not use any additional technical standards beyond those cited in the final CAIR and CAMR. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this action.

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

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

In accordance with Executive Order 12898, EPA expects this rule to have no disproportionate negative impacts on minority or low income populations because the emissions reduced by CAIR and CAMR remain essentially the same.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 19, 2007.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to CAIR and/or CAMR is "nationally applicable" within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the CAA, a provision which has nationwide applicability. In additions, CAIR applies to 28 States and the District of Columbia; and CAMR applies to all 50

States and the District of Columbia. CAIR and CAMR are also based on a common core of factual findings and analyses concerning the transport of pollutants between different States subject to CAIR and CAMR. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to CAIR and CAMR. For these reasons, the Administrator also is determining that any final action regarding CAIR and/or CAMR is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final actions is published in the **Federal Register**.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Intergovernmental relations, Metals, Natural gas, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 72

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Air pollution, control, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: October 11, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 51, 60, 72, 78, 96, and 97 of chapter 1 of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.123 is amended as follows:

■ a. By adding a sentence at the end of paragraph (o)(1);

■ b. By adding a sentence at the end of paragraph (aa)(1);

■ c. In paragraph (cc):

i. In the definition of "Allocate or allocation", by removing the word "source" and adding in its place the words "source or other entity";

ii. By adding in alphabetical order a new definition of "Biomass";

iii. In the definition of "Cogeneration unit", by removing, in paragraph (2) introductory text, the words "year after which" and adding in their place the words "year after the calendar year in which", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place, and by adding a new paragraph (3);

iv. In paragraph (2) of the definition of "Combustion turbine", by removing the words "any associated heat recovery steam generator" and adding in their place the words "any associated duct burner, heat recovery steam generator,";

v. By revising the definition of "Maximum design heat input";

vi. In the definition of "Nameplate capacity", by removing the words "other deratings) as specified" and adding in their place the words "other deratings) as of such installation as specified" and by removing the words "maximum amount as specified" and adding in their place the words "maximum amount as of such completion as specified"; and

vii. By adding a sentence at the end of the definition of "Total energy input"; and

■ d. In paragraph (ee)(1), by removing the words "State adopt" and adding in their place the words "State may adopt" and by adding a sentence at the end of paragraph to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

* * * * *

(o)(1) * * * Before January 1, 2009, a State's regulations shall be considered to be substantively identical to subparts AA through II of part 96 of this chapter, or differing substantively only as set forth in paragraph (o)(2) of this section, regardless of whether the State's regulations include the definition of "Biomass", paragraph (3) of the definition of "Cogeneration unit", and the second sentence of the definition of "Total energy input" in § 96.102 of this chapter promulgated on October 19, 2007, provided that the State timely submits to the Administrator a SIP revision that revises the State's regulations to include such provisions. Submission to the Administrator of a SIP revision that revises the State's regulations to include such provisions shall be considered timely if the submission is made by January 1, 2009.

* * * * *

(aa)(1) * * * Before January 1, 2009, a State's regulations shall be considered to be substantively identical to subparts AAAA through IIII of part 96 of the chapter, or differing substantively only as set forth in paragraph (o)(2) of this section, regardless of whether the State's regulations include the definition of "Biomass", paragraph (3) of the definition of "Cogeneration unit", and the second sentence of the definition of "Total energy input" in § 96.302 of this chapter promulgated on October 19, 2007, provided that the State timely submits to the Administrator a SIP revision that revises the State's regulations to include such provisions. Submission to the Administrator of a SIP revision that revises the State's regulations to include such provisions shall be considered timely if the submission is made by January 1, 2009.

* * * * *

(cc) * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

(ee) * * *

(1) * * * Before January 1, 2009, a State's applicability provisions shall be considered to be substantively identical to § 96.304 of this chapter (with the expansion allowed under this paragraph) regardless of whether the State's regulations include the definition of "Biomass", paragraph (3) of the definition of "Cogeneration unit", and the second sentence of the definition of "Total energy input" in § 97.102 of this chapter promulgated on October 19, 2007, provided that the State timely submits to the Administrator a SIP revision that revises the State's regulations to include such provisions. Submission to the Administrator of a SIP revision that revises the State's regulations to include such provisions shall be considered timely if the submission is made by January 1, 2009.

* * * * *

■ 3. Section 51.124 is amended as follows:

■ a. By adding a sentence at the end of paragraph (o)(1); and

■ b. In paragraph (q):

i. In the definition of "Allocate or allocation", by removing the word "source" and adding in its place the words "source or other entity";

ii. By adding in alphabetical order a new definition of "Biomass";

iii. In the definition of "Cogeneration unit", by removing, in paragraph (2) introductory text, the words "year after which" and adding in their place the words "year after the calendar year in which", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place, and by adding a new paragraph (3);

iv. In paragraph (2) of the definition of "Combustion turbine", by removing the words "any associated heat recovery steam generator" and adding in their place the words "any associated duct burner, heat recovery steam generator,";

v. By revising the definition of "Maximum design heat input";

vi. In the definition of "Nameplate capacity", by removing the words "other deratings) as specified" and adding in their place the words "other deratings as of such installation as specified" and by removing the words "maximum amount as specified" and adding in their place the words "maximum amount as of such completion as specified"; and

vii. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

* * * * *

(o)(1) * * * Before January 1, 2009, a State's regulations shall be considered to be substantively identical to subparts AAA through III of part 96 of the chapter, or differing substantively only as set forth in paragraph (o)(2) of this section, regardless of whether the State's regulations include the definition of "Biomass", paragraph (3) of the definition of "Cogeneration unit", and the second sentence of the definition of "Total energy input" in § 96.202 of this chapter promulgated on October 19, 2007, provided that the State timely submits to the Administrator a SIP revision that revises the State's regulations to include such provisions. Submission to the Administrator of a SIP revision that revises the State's regulations to include such provisions shall be considered timely if the submission is made by January 1, 2009.

* * * * *

(q) * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

PART 60—[AMENDED]

■ 4. The authority citation for Part 60 is revised to read as follows:

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

■ 5. Section 60.24(h) is amended as follows:

■ a. By adding a sentence at the end of paragraph (6)(1); and

■ b. In paragraph (8):

i. By adding in alphabetical order a new definition of "Biomass";

ii. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and replacing it with a semicolon and by adding a new paragraph (3); and

iii. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(h) * * *

(6)(i) * * * Before January 1, 2009, a State's regulations shall be considered to be substantively identical to subpart HHHH of this part, or differing substantively only as set forth in paragraph (h)(6)(ii) of this section, regardless of whether the State's regulations include the definition of "Biomass", paragraph (3) of the definition of "Cogeneration unit", and the second sentence of the definition of "Total energy input" in § 60.4102 of this chapter promulgated on October 19, 2007, provided that the State timely submits to the Administrator a State plan that revises the State's regulations to include such provisions. Submission to the Administrator of a State plan that revises the State's regulations to include such provisions shall be considered timely if the submission is made by January 1, 2010.

* * * * *

(8) * * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

■ 6. Section 60.4102 is amended as follows:

■ a. By adding in alphabetical order a new definition of "Biomass";

■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding in its place a semicolon and by adding a new paragraph (3); and

■ c. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 60.4102 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

PART 72—PERMITS REGULATION

■ 7. The authority citation for Part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 72.24 [Amended]

■ 8. Section 72.24 is amended, in paragraph (a)(9) introductory text, by removing the words "life-of-the-unit, firm power contractual arrangements" and adding in their place the words "a life-of-the-unit, firm power contractual arrangement".

PART 78—APPEAL PROCEDURES

■ 9. The authority citation for Part 78 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, and 7651, *et seq.*

■ 10. Section 78.1 is amended by revising paragraph (a)(1) to read as follows:

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under subpart HHHH of part 60 of this chapter or State regulations approved under § 60.24(h)(6)(i) or (ii) of this chapter, part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through II of part 96 of this chapter or State regulations approved under § 51.123(o)(1) or (2) of this chapter, subparts AAA through III of part 96 of this chapter or State regulations approved under § 51.124(o)(1) or (2) of this chapter, subparts AAAA through IIII of part 96 of this chapter or State regulations approved under § 51.123(aa)(1) or (2) of this chapter, or part 97 of this chapter; provided that matters listed in § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed. All references in paragraph (b) of this section and in § 78.3 to subpart HHHH of part 60 of this chapter, subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, and subparts AAAA through IIII of part 96 of this chapter shall be read to include the comparable provisions in State regulations approved under § 60.24(h)(6)(i) or (ii) of this chapter, § 51.123(o)(1) or (2) of this chapter, § 51.124(o)(1) or (2) of this chapter, and § 51.123(aa)(1) or (2) of this chapter, respectively.

* * * * *

PART 96—[AMENDED]

■ 11. The authority citation for Part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

■ 12. Section 96.102 is amended as follows:

■ a. By adding in alphabetical order a new definition of "Biomass";

■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place and by adding a new paragraph (3);
■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CC of this part"; and
■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 96.102 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

■ 13. Section 96.202 is amended as follows:
■ a. By adding in alphabetical order a new definition of "Biomass";
■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place and by adding a new paragraph (3);
■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CCC of this part"; and
■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 96.202 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

■ 14. Section 96.302 is amended as follows:
■ a. By adding in alphabetical order a new definition of "Biomass";
■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon its place and by adding a new paragraph (3);
■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CCCC of this part"; and
■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 96.302 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

PART 97—[AMENDED]

■ 15. The authority citation for Part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 16. Section 97.102 is amended as follows:
■ a. By adding in alphabetical order a new definition of "Biomass";
■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place and by adding a new paragraph (3);
■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CC of this part"; and
■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 97.102 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

■ 17. Section 97.202 is amended as follows:

■ a. By adding in alphabetical order a new definition of "Biomass";

■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place and by adding a new paragraph (3);

■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CCC of this part"; and

■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 97.202 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

■ 18. Section 97.302 is amended as follows:

■ a. By adding in alphabetical order a new definition of "Biomass";

■ b. In the definition of "Cogeneration unit", by removing the period at the end of paragraph (2)(ii) and adding a semicolon in its place and by adding a new paragraph (3);

■ c. In the definition of "Permitting authority", by removing the words "in accordance with subpart CCCC of this part"; and

■ d. By adding a sentence at the end of the definition of "Total energy input" to read as follows:

§ 97.302 Definitions.

* * * * *

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

* * * * *

Cogeneration unit means * * *

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

* * * * *

Total energy input means * * * Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

* * * * *

[FR Doc. E7–20447 Filed 10–18–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0011; FRL–8484–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of Particulate Matter From Pulp and Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision pertains to amendments to an existing regulation to control particulate matter from pulp and paper mills. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on November 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2005–VA–0011. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 2007 (72 FR 36404), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Virginia's plan to control particulate matter emissions from pulp and paper mills (9 VAC 5, Chapter 40, Article 13, Rule 4–13). The formal SIP revision was submitted by the Commonwealth of Virginia on June 21, 2005. Other specific requirements of Virginia's plan to control particulate matter from pulp and paper mills and the rational for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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

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

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

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

III. Final Action

EPA is approving the amendments to an existing regulation (9 VAC 5, Chapter 40, Article 13, Rule 4–13) submitted on June 21, 2005 as a revision to the Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65

FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the amendments to Virginia's regulation to control particulate matter from pulp and paper mills, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 10, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Article 13 (title), 5–40–1660, 5–40–1670, 5–40–1750, and 5–40–1810 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 13 Emission Standards From Kraft Pulp and Paper Mills (Rule 4–13)				
5–40–1660	Applicability and designation of affected facilities.	04/01/99	10/19/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–40–1670	Definitions	04/01/99	10/19/07 [Insert page number where the document begins].	Added: Neutral sulfite semichemical pulping operation, New design recovery furnace, Pulp and paper mill, Semichemical pulping process; Revised: Cross recovery furnace, Straight kraft recovery furnace, Total reduced sulfur; Removed: Agreement
* *	* *	*	* *	* *
5–40–1750	Compliance	04/01/99	10/19/07 [Insert page number where the document begins].	
* *	* *	*	* *	* *
5–40–1810	Permits	04/01/99	10/19/07 [Insert page number where the document begins].	
* *	* *	*	* *	* *

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[FR Doc. E7–20568 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0173;FRL–8484–2]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Central Indiana To Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 26, 2007, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA approval of a redesignation of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties (the Central Indiana Area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). IDEM also requested EPA approval of an ozone maintenance plan for this area as a revision of the Indiana State Implementation Plan (SIP). The maintenance plan demonstrates maintenance of the ozone NAAQS in this area through 2020 and establishes 2006 and 2020 motor vehicle Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) emission budgets for this area. EPA is making a determination that the Central Indiana Area has attained the 8-hour ozone NAAQS. EPA is approving, as a SIP revision, the State's ozone maintenance plan for this area. Indiana has satisfied the criteria for the redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS, and, therefore, EPA is approving Indiana's ozone redesignation request for this area. Further, EPA is approving, for purposes of transportation conformity, the VOC and NO_X Motor Vehicle Emission Budgets (MVEBs) for 2006 and 2020 that are contained in the 8-hour ozone maintenance plan. EPA proposed these actions on July 31, 2007, and received only one comment in response supporting the proposed actions.

DATES: This final rule is effective on October 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID NO. EPA–R05–OAR–2007–0173. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, 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 at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: In the following, whenever "we," "us," or "our" are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?

The background for today's action is discussed in detail in EPA's July 31, 2007, proposed rule (72 FR 41658). In that proposed rule, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained in an area when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 parts per million parts of air (ppm) at all ozone monitoring sites in the area. (See 69 FR 23857 (April 30, 2004)).

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated the Central Indiana Area as a nonattainment area for the 8-hour ozone NAAQS in a **Federal Register** notice published on April 30, 2004 (69 FR 23857). At the same time, EPA classified the Central Indiana Area as a subpart 1 8-hour ozone nonattainment area, based on quality assured air quality data for the period of 2001–2003.

Under the CAA, a nonattainment area may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the air quality standard and if the area meets other redesignation requirements in section 107(d)(3)(E) of the CAA. On March 26, 2007, Indiana submitted a request for redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured data for the period of 2004–2006, indicating attainment of the 8-hour ozone NAAQS (we have also reviewed available 2007 ozone data for this area, and, to date, have seen no violations of the 8-hour ozone standard). The redesignation request demonstrated that the Central Indiana Area had met the redesignation criteria contained in the CAA. The redesignation request included an ozone maintenance plan and documentation of 2006 and 2020 VOC and NO_X MVEBs for this area. Our July 31, 2007, proposed rule (72 FR 41658) provides a discussion of how the Central Indiana Area and the State of Indiana have met the redesignation requirements for this area.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (DC Cir. 2006). For the reasons set forth in the July 31, 2007, proposed rule, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period. The comment period closed on August 31, 2007. We received only one comment letter from the City of Indianapolis, which supported our proposed approval of Indiana's ozone redesignation request.

III. What Are Our Final Actions?

EPA is taking several related actions for the Central Indiana Area. First, EPA is making a determination that the Central Indiana Area has attained the 8-hour ozone standard. EPA is approving Indiana's ozone maintenance plan SIP revision for the Central Indiana Area. EPA is approving the State's request to change the legal designation of the Central Indiana Area from nonattainment to attainment of the 8-hour ozone NAAQS. Finally, for the Central Indiana Area, EPA is approving 2006 MVEBs of 54.32 tons VOC per day and 106.19 tons NO_X per day and 2020 MVEBs of 29.52 tons VOC per day and 35.69 tons NO_X per day.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a State to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal Standard.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under Section 307(b)(1) of the 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 December 18, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: October 10, 2007.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (jj) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(jj) Approval—On March 26, 2007, Indiana submitted a request to redesignate Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties (the Central Indiana Area) (Indianapolis ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard. As part of the redesignation request, the State submitted an ozone maintenance plan as required by section 175A of the Clean Air Act. Part of the section 175A maintenance plan includes a contingency plan. The ozone maintenance plan establishes 2006 motor vehicle emission budgets for the Central Indiana Area of 54.32 tons per day for volatile organic compounds (VOC) and 106.19 tons per day for nitrogen oxides (NO_X) and 2020 motor vehicle emission budgets for the Central Indiana Area of 29.52 tons per day for VOC and 35.69 tons per day for NO_X.

PART 81—[AMENDED]

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

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

■ 4. Section 81.315 is amended by revising the entries for Indianapolis, Indiana: in the table entitled "Indiana-Ozone (8-Hour Standard)" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Indianapolis, IN:	October 19, 2007			

INDIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
Boone County		Attainment.		
Hamilton County		Attainment.		
Hancock County		Attainment.		
Hendricks County		Attainment.		
Johnson County		Attainment.		
Madison County		Attainment.		
Marion County		Attainment.		
Morgan County		Attainment.		
Shelby County		Attainment.		

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

* * * * *

[FR Doc. E7–20569 Filed 10–18–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R03–OAR–2007–0344; FRL–8484–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Mercer County Portion of the Youngstown-Warren-Sharon, OH–PA 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Mercer County portion of the Youngstown-Warren-Sharon, OH–PA 8-hour ozone nonattainment area ("Youngstown Area" or "Area") be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). The Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. EPA is approving the ozone redesignation request for Mercer County. In a separate rulemaking action (72 FR 32190, June 12, 2007) EPA approved the ozone redesignation request for Trumbull, Mahoning, and Columbiana Counties, Ohio. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Mercer County that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for Mercer County which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Mercer County maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, and the maintenance plan and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on November 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0344. 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, PA 17105.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 27, 2007 (72 FR 41246), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request, a SIP revision that establishes a maintenance plan for Mercer County that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation, and a 2002 base year emissions inventory. The formal SIP revisions were submitted by PADEP on March 27, 2007. Other specific requirements of Pennsylvania's redesignation request SIP revision for the maintenance plan and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the D. C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and

the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS.

In addition the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

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

In its proposal, EPA proposed to find that the area had satisfied the requirements under the 1-hour standard whether the 1-hour standard was deemed to be reinstated or whether the Court's decision on the petition for rehearing were modified to require something less than compliance with all applicable 1-hour requirements. Because EPA proposed to find that the area satisfied the requirements under either scenario, EPA is proceeding to finalize the redesignation and to conclude that the area met the requirements under the 1-hour standard applicable for purposes of redesignation under the 8-hour standard. These include the provisions of EPA's anti-backsliding rules, as well as the additional anti-backsliding provisions identified by the Court in its rulings. In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, EPA finds that the area has met the anti-backsliding requirements, *see* 40 CFR 51.900 *et seq.*; 70 FR 30592, 30604 (May 26, 2005) which apply by virtue of the area's classification for the 1-hour ozone NAAQS, as well as the four additional anti-backsliding provisions identified by the Court, or that such requirements are not applicable for purposes of redesignation. In addition, with respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and the 2002 base year emissions inventory because the requirements for approval have been satisfied. EPA has evaluated Pennsylvania's redesignation request that was submitted on March 27, 2007 and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Mercer County has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of Mercer County from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for Mercer County submitted on March 27, 2007 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base year emissions inventory submitted by PADEP on March 27, 2007 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for volatile organic compounds (VOC) and nitrogen oxides (NO_X) in Mercer County for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes.[1] As a result of our finding, Mercer County must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

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

Budget year	VOC	NO_X
2009	4.2	11.2
2018	2.6	4.9

Mercer County is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not

[1] EPA found the MVEBs for Trumbull, Mahoning, and Columbiana Counties, Ohio adequate in a Notice of Adequacy on April 18, 2007 (72 FR 19491).

have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation of Mercer County to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution Control, National Parks, Wilderness Areas.

Dated: October 10, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

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

52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Mercer County	03/27/07	10/19/07 [Insert page number where the document begins].	

* * * * *

PART 81—[AMENDED]

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

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

■ 4. In § 81.339, the table entitled "Pennsylvania—Ozone (8-Hour Standard)" is amended by revising the entry for the Youngstown-Warren-Sharon, OH–PA: Mercer County to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated Area	Designation[a]		Category/Classification	
	Date [1]	Type	Date [1]	Type

PENNSYLVANIA—OZONE (8-HOUR STANDARD)—Continued

Designated Area	Designation[a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *	*	*
Youngstown-Warren-Sharon, OH–PA Area:				
Mercer County	11/19/07	Attainment		
* * *	*	* *	*	*

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

* * * * *

[FR Doc. E7–20567 Filed 10–18–07; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2006–26174; Notice No. 2]

RIN 2130–AB83

Locomotive Safety Standards; Sanders

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

ACTION: Final rule.

SUMMARY: FRA is revising the existing requirements related to sanders on locomotives. This rule modifies the existing regulations by permitting additional flexibility in the use of locomotives with inoperative sanders. The rule provides railroads the ability to better utilize their locomotive fleets while ensuring that locomotives are equipped with operative sanders in situations where they provide the most benefit from a safety and operational perspective. The rule also makes the regulations related to operative sanders more consistent with existing Canadian standards related to the devices.

DATES: This final rule is effective December 18, 2007; petitions for reconsideration must be received on or before December 18, 2007. Petitions received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA–2006–24838, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6247), or Michael Masci, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) was enacted in 1911. It prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49) (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49).

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of locomotive safety, FRA has issued regulations, found at 49 CFR part 229 ("part 229"), addressing topics such as inspections and tests, safety requirements for brake, draft, suspension, and electrical systems, and cabs and cab equipment. All references to parts and sections in this document shall be to parts and sections located in Title 49 of the Code of Federal Regulations. FRA continually reviews its regulations and revises them as needed to keep up with emerging technology.

On July 12, 2004, the Association of American Railroads (AAR), on behalf of itself and its member railroads, petitioned the FRA to delete the requirement as contained in 49 CFR 229.131. The petition and supporting documentation asserted that contrary to

popular belief, depositing sand on the rail will not have any significant influence on the emergency stopping distance of a train. Subsequent to the petition, FRA and interested industry members began identifying various issues related to locomotive safety standards with the intent that FRA would potentially address the issues through its Railroad Safety Advisory Committee (RSAC).

II. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Chemistry Council
American Petrochemical Institute
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Association (ATDA)
Amtrak
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employes Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association (HSGTA)
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Railroad Passenger Corporation (Amtrak)
National Transportation Safety Board (NTSB)*
Railway Supply Institute (RSI)
Safe Travel America (STA)
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc
Transport Canada*
Transport Workers Union of America (TWU)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)

*Indicates associate membership

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If a task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

III. Proceedings to Date

On February 22, 2006, FRA presented, and the RSAC accepted, the task of reviewing existing locomotive safety needs and recommending consideration of specific actions useful to advance the safety of rail operations. The RSAC established the Locomotive Safety Standards Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, included the following:

APTA
ASLRRA
Amtrak
AAR
ASRSM
BLET
BMWE
BRS
BNSF Railway Company (BNSF)
California Department of Transportation
Canadian National Railway (CN)
Canadian Pacific Railway (CP)
Conrail
CSX Transportation (CSXT)
Florida East Coast Railroad
General Electric (GE)
Genesee & Wyoming Inc.
International Association of Machinists and Aerospace Workers
IBEW
Kansas City Southern Railway (KCS)
Long Island Rail Road
Metro-North Railroad
MTA Long Island
National Conference of Firemen and Oilers
Norfolk Southern Corporation (NS)
Public Service Commission of West Virginia
Rail America, Inc.
Southeastern Pennsylvania Transportation Agency
SMWIA
STV, Inc.
Tourist Railway Association Inc.
Transport Canada
Union Pacific Railroad (UP)
UTU
Volpe Center
Wabtech Corporation
Watco Companies

The task statement approved by the full RSAC sought immediate action from the Working Group regarding the need for and usefulness of the existing regulation related to locomotive sanders. The task statement established a target date of 90 days for the Working Group to report back to the RSAC with recommendations to revise the existing regulatory sander provision. The Working Group conducted two meetings that focused almost exclusively on the sander requirement. The meetings were held on May 8–10, 2006, in St. Louis, Missouri, and on August 9–10, 2006, in Fort Worth, Texas. Minutes of these meetings have been made part of the docket in this proceeding. After broad and meaningful discussion related to the potential safety and operational benefits provided by equipping

locomotives with operative sanders, the Working Group reached consensus on a recommendation for the full RSAC.

On September 21, 2006, the full RSAC unanimously adopted the Working Group's recommendation on locomotive sanders as its recommendation to FRA. The RSAC recommendation included the Working Group's consensus rule text, and requested that FRA draft a regulatory proposal related to the use of sanders on locomotives performing switching service at outlying locations. The Working Group's discussion of outlying locations was based on an apparent need to distinguish locations that did not have sufficient access to a sand delivery system from those that do have such access. FRA reviewed and accepted the RSAC's recommendation and developed a regulatory proposal based on that recommendation. The specific regulatory language recommended by the RSAC was amended slightly for clarity and consistency, and FRA independently developed proposed provisions related to the use of sanders on locomotives used in switching service at outlying locations.

On March 6, 2007, FRA published a Notice of Proposed Rulemaking (NPRM). *See* 72 FR 9904. FRA solicited written comments from the public in the NPRM in accordance with the Administrative Procedure Act (5 U.S.C. 553). Consideration of public comment allows FRA to access additional viewpoints from interested parties and include them when appropriate. By the close of the comment period on May 7, 2007, two sets of comments were received. Comments were received on May 4, 2007 from the BLET, and on May 7, 2007 from the AAR. The comments can be classified into three general categories: (1) Responses to specific requests for comments that were made in the NPRM; (2) inquiries regarding the treatment of locomotives that switch position en route changing between lead and trailing positions in the consist under paragraph 229.131(b)(1) and (b)(2); and, (3) remarks concerning the portions of the NPRM that were developed independently by FRA (the definition of sand delivery system and paragraph 229.131(c)(1)).

In order to further clarify written comments received during the comment period, comments were discussed by the Working Group at the June 8, 2007 meeting in Chicago. The discussion, although limited in scope, furthered FRA's understanding of the written comments that were received. Obviously, there can be a tremendous benefit to clarity when in-person oral communication is permitted, including: (1) An opportunity for a party to refine a comment based on one or more questions from the Agency or other party; (2) observations of verbal tone and physical expressions that facilitate better understanding; and (3) an opportunity to accommodate a party that is more effective at communicating orally than it is in writing. Based on its thorough review, FRA addresses each of the comments in the relevant regulatory paragraphs of the section-by-section analysis provided below.

FRA continues to agree with the Working Group's determination that locomotive sanders provide limited safety benefits and that the primary benefits derived from the devices are operational. Accordingly, this final rule retains the NPRM's goal of preserving the limited safety benefits of the devices while addressing the overly restrictive nature of the existing provision. This rule provides appropriate relief from the existing requirement by creating a more precise standard. The final rule requires sander maintenance based on operational realities instead of the current time-based standard. The final rule provides relief according to specific identified operational conditions. The rule distinguishes between the following conditions: lead and non-lead locomotives; locomotives in road service and switching service; and, locomotives at locations with or without a sand delivery system. These distinctions better reflect current railroad operations while maintaining the current level of safety provided by sanders. The rule also harmonizes the sander requirement with the existing Canadian requirements by placing a fourteen-day limit on service for lead locomotives in road service with inoperative sanders.

Throughout the preamble discussion of this rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions or positions identified or contained in the minutes of the Working Group meetings. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

IV. Technical Background

The NPRM provided a comprehensive technical discussion addressing the usefulness of sand in the operation of locomotives. *See* 72 FR 9906–08. The discussion evaluated: the effect of sand on adhesion, and braking distance; as well as the current use of sand as instructed by railroad operating rules and training. The discussion demonstrates that having operative sanders benefits the locomotive, and that the benefit could be realized while allowing greater operational flexibility. Two expected benefits from the use of sand concern extended range dynamic braking and lite locomotives. FRA expects the use of sand in conjunction with extended range dynamic braking will provide some benefit. Extended range dynamic braking is currently used extensively to slow trains and (with rolling resistance and perhaps the independent brake) bring them to a stop. Locomotive engineers may utilize dynamic brakes rather than the automatic train brake, where possible, in order to conserve fuel and avoid undesired emergency brake applications. FRA also expects that sand applied on multiple axles could be an important contributor to maintaining satisfactory stopping distances of lite locomotive consists under unfavorable conditions (wet rail, etc.). Locomotives are frequently moved in order to reposition power throughout the fleet. For these lite locomotives, sand will remain on the rail long enough to assist adhesion between the wheels and the rail for a lite locomotive consist. FRA does not believe it is necessary to reiterate the technical discussion in this final rule and directs parties interested in that discussion to the NPRM. *See* 72 FR 9906–08.

V. Current Regulatory Impediments

Relaxing the locomotive sanding requirement will maintain safety and will allow railroads to better utilize their locomotive fleets. The current requirement allows a locomotive found with a defective sander to continue in service to the next forward location where repairs can be made or the next calendar day inspection, whichever occurs first. Under the new requirement contained in this final rule, a lead locomotive in an over-the-road train may continue to be utilized by the railroad for up to fourteen days; in the case of a trailing locomotive, it may continue to be utilized by the railroad until placed in a facility with a sand

delivery system or departure from an initial terminal.

The final rule recognizes the reality that sanding may reach optimal effectiveness even where one or more locomotive sanders in a consist is inoperative. Locomotives are routinely equipped with two sanders at each end. Often a consist will contain multiple locomotives. Each locomotive in a multiple-locomotive consist distributes sand to the rail. As a result, when each of the locomotives in a multiple locomotive consist are operating with all sanders operative, the train potentially distributes more sand to the rail than it will utilize. At that point, the effect of the sand on the train would be the same if one or two sanders in the consist were inoperative.

Requirements for sanders can be traced back to the steam locomotive era. At that time, sanding the rail was thought to enhance adhesion between the steam locomotive wheel and the rail. Modern diesel locomotives rely on wheel slip and wheel creep devices, as well as sand, to provide adhesion between the wheel and rail. Where sanders are inoperative on a diesel locomotive, the total loss of adhesion would be less than it would have been for a steam locomotive. Notably, any reduced adhesion would limit the ability of the locomotive to pull its train. Loss of the ability to pull the train is a productivity concern that is not being addressed by this final rule.

This final rule also recognizes the fact that sanding the rail in braking mode provides little additional adhesion to a train, because train handling depends primarily on train brakes to maintain train dynamics. The locomotive braking has limited effect. As stated in the technical discussion contained in the NPRM, by the time the locomotives in the consist have passed over the sanded rail, little to no sand remains on the rail and little or no benefit is provided to train braking.

VI. Section-by-Section Analysis

Amendments to 49 CFR Part 229

Section 229.5 Definitions

FRA is adding the term "sand delivery system" in this section. The term will mean a permanently stationed or fixed device designed to deliver sand to locomotive sand boxes that do not require the sand to be manually delivered or loaded. A sand delivery system will be considered permanently stationed if it is at a location at least five days a week for at least eight hours per day.

FRA is also adding the term "initial terminal." The definition of this term will be identical to that currently contained in 49 CFR 232.5 and 238.5. The term will mean "a location where a train is originally assembled."

Section 229.9 Movement of Non-Complying Locomotives

FRA is amending this section to exempt locomotives operated under paragraphs 229.131(b) and (c)(1) from the movement for repair provision contained in § 229.9. In general, § 229.9 currently provides movement for repair requirements for equipment found with non-complying conditions under part 229. Paragraphs 229.131(b) and (c)(1) in this rule contain specific requirements relating to the movement and continued use of locomotives with defective sander equipment. Because the paragraphs specifically address movement for repair, applying § 229.9 would be superfluous or conflicting, and is no longer necessary.

FRA is also making a clarifying amendment to this section of part 229. Section 229.9 currently contains the following exception that reads: "[e]xcept as provided in * * * 229.125(h)." The exception relates to locomotive auxiliary lights and although a correct citation when originally inserted into the regulations, later amendments to that section resulted in redesignation of the paragraphs. The exception should refer to § 229.125(g). Like § 229.131(b) and (c)(1), § 229.125(g) sets forth movement for repair requirements specific to that section. Consequently, FRA is making this clarification in this regulatory proceeding.

Section 229.131 Sanders

Paragraph (a). This paragraph establishes a general requirement that locomotives be equipped with operative sanders before departing an initial terminal. Any time a locomotive is in use before leaving the initial terminal, it will be required to have operative sanders. The term "in use" has been consistently applied to mean when a locomotive is capable of being used. Thus, the locomotive does not have to actually be used to be in use. Examples of a locomotive in use are when a locomotive has been inspected, or a locomotive is on a ready track. FRA agrees with the RSAC's recommendation that the initial terminal would be an appropriate place to initially require operative sanders, because it is a place where sander maintenance can usually be accomplished without imposing a significant burden on the railroad. In many instances, locations where trains are initiated are equipped with sand delivery systems and are capable of making repairs to the sander mechanisms. FRA notes that this rule will permit locomotives to be released from daily locomotive inspections with inoperative sanders. However, the rule will require sanders to be repaired or handled for repair under § 229.9 if defective when the locomotive is preparing to depart from an initial terminal. In instances where repairs cannot be performed, a locomotive may be dispatched from an initial terminal but only under the strict provisions contained in § 229.9. Thus, the locomotive could only continue in use to the nearest forward location where necessary repairs could be effectuated or to the locomotive's next calendar day inspection, whichever occurs first. FRA further notes that if a locomotive is at an initial terminal for its train and that location has a sand delivery system or is otherwise capable of making sander repairs, then the locomotive may not legally depart that location with inoperative sanders. FRA also intends to make clear that a locomotive's sanders will only be considered operative if appropriate amounts of sand are deposited on each rail in front of the first power operated wheel set in the direction of movement.

FRA recognizes that this rule will be less restrictive than the movement for repair provisions currently contained in § 229.9. In most instances, locomotives will likely encounter an initial terminal less frequently than a daily inspection. This will facilitate more efficient railroad operations. Under the current provision, a railroad will take a locomotive out of service when a sander defect is found at the daily inspection. By requiring operative sanders less frequently, the new requirement allows the railroad to keep the locomotive in service for longer periods of time. With more locomotives in service, the railroad will be able to better utilize its power throughout its fleet.

Paragraph (b). This paragraph contains the requirements for handling locomotives used in road service where sanders become inoperative after departure from an initial terminal. Road service will be distinguished from yard service because the type of service affects the need for sand. Locomotives performing road service will likely be in longer trains and run at higher speeds than those performing switching service. The existing definition of switching service, as it appears in §§ 229.5 and 232.5, provides background for the distinction between road service and switching service. Switching service means "assembling cars for train movements * * * or

moving rail equipment in connection with work service that does not constitute a train movement." Any movement that is not considered "switching service" would be considered "road service." Therefore, any service which constitutes a "train movement" would be considered "road service" for purposes of this section. The preamble to the final rule related to part 232 (66 FR 4104, January 17, 2001) contains detailed discussion of the factors that are to be considered when determining what constitutes a "train movement." *See* 66 FR 4148–49.

Paragraph (b)(1). This paragraph establishes requirements related to lead locomotives being used in road service where sanders are discovered to be inoperative after departure from an initial terminal. Once inoperative sanders are discovered on these locomotives, there are four triggers that will determine how long a lead locomotive will be permitted to remain in service with inoperative sanders. The triggers are: the next initial terminal; a location where it is placed in a facility with a sand delivery system; its next periodic inspection under § 229.23; or fourteen calendar days from the date the sanders are first discovered to be inoperative, whichever occurs first.

FRA agrees with the Working Group's determination that the four triggering events will ensure that sanders are repaired in a timely fashion while providing railroads the ability to better utilize their locomotive fleets. Under the existing rule, a locomotive can move only until the next daily inspection with inoperative sanders. Utilizing four different triggers allows the railroad a greater degree of operational flexibility. Each trigger provides a logical point at which sander maintenance should and can be conducted without impacting a railroad's operation to a significant degree. The initial terminal is an appropriate place to require operative sanders for the reasons stated in paragraph 229.131(a). When a locomotive is placed in a facility that has a sand delivery system it is appropriate to require a railroad to provide sander maintenance. Placed in a facility is intended to mean actually placed on trackage with access to the sand delivery system, and not merely passing through a location with a sand delivery system on the premises. Similarly, when a locomotive is given its required periodic inspection it is expected that the location will be capable of providing repairs and additional sand to the locomotive sanders with little burden. Permitting a lead locomotive to remain in service for no longer than fourteen days is reasonable as it permits the locomotive to reach the destination of a long-distance train run, ensures timely repairs to the sanders, and is more consistent with the current Canadian requirement.

One commenter sought clarification on how FRA will enforce this rule when a lead locomotive is switched to a trailing position en route. As three of the triggering events are identical for both lead and trailing locomotives, they would be equally applicable to either type of locomotive and further clarification is unnecessary. With regard to how the calendar-day triggering event will be applied, FRA agrees that further clarification would be beneficial. After a lead locomotive is switched to a trailing position, the days will continue to be counted pursuant to the fourteen day requirement (along with the three other triggers) of this paragraph. For example, if locomotive XYZ–12345 is operating in the lead position and is found to have an inoperative sander on Monday June 25, the calculation of days pursuant to this paragraph begins on that day. Monday, June 25 is day one. On Tuesday, June 26, locomotive XYZ–12345 is switched to a trailing position in the consist. While in a trailing position, the days continue to be counted. Tuesday, June 26 is counted as day two. Under this scenario, the fourteenth calendar day for locomotive XYZ–12345 is Sunday July 8. Therefore, if the inoperative sander is not repaired prior to being used on or after July 9, the operating railroad would be in violation of this paragraph.

Comments were also received regarding the definition of sand delivery system. One commenter suggested adding a requirement to have each railroad identify to FRA all facilities that fit within the definition, and obtain permission from FRA to close the facility or reduce hours. While this comment is insightful, FRA believes that the commenter's suggested requirement would be inconsistent with the spirit of the RSAC's consensus rule text. The rule aims to maintain safety while better accommodating current operational realities by providing more flexibility when appropriate. Adding this requirement would create a more rigid process that would significantly increase the burden on both FRA and the railroads with a marginal effect on safety. According to the rule that was proposed, railroads will be required to repair inoperative sanders when the locomotive is placed in a facility equipped with a sand delivery system. Formally identifying and changing locations through an approval process would cause delay. The delay would adversely affect operations and inhibit appropriate flexibility.

Another commenter sought clarification regarding two related issues: (1) Whether a mobile unit, for example a mobile truck, could be considered a sand delivery system; and, (2) how the five day per week, eight hour per day, requirement will be calculated? The rule does not provide for special treatment for mobile units. Any unit that fits the definition will be treated as a sand delivery system, including mobile units. Railroads are expected to utilize all available information to accurately anticipate which locations will be equipped with a sand delivery system for each week. At a minimum, locations where on average a sand delivery system is permanently stationed (i.e. is at the location at least five days per week for at least eight hours per day) over the previous four weeks, would be determined to be a location equipped with a sand delivery system for the following week. This determination may be refuted by the railroad with additional information.

Paragraph (b)(2). This paragraph contains the requirements for handling trailing locomotives that are being used in road service when sanders are discovered to be inoperative after departure from an initial terminal. Once inoperative sanders are discovered, the rule sets forth three triggering events that will determine how long a trailing locomotive will be permitted to remain in service with inoperative sanders. The triggering events in this paragraph are identical to those in paragraph (b)(1) except for the elimination of the fourteen day requirement. FRA agrees with the Working Group's determination that the need to provide sand to a trailing locomotive is less critical than it is for a lead locomotive. The engineer operating the train or locomotive consist may be more familiar with the lead locomotive than with the trailing locomotive. The engineer is likely to be operating from the lead locomotive, and thus, that locomotive is less likely to be switched out of the consist while moving over the road.

The term "trailing locomotive," as used in this paragraph, specifically refers to a locomotive that is located behind the lead locomotive in a train or locomotive consist. The NPRM specifically included "distributed power locomotives." A distributed power locomotive, as defined in § 229.5, is a locomotive that is part of a distributed power system that provides control to a number of locomotives dispersed in a consist from command signals originating in the lead

locomotive. Distributed power locomotives are also trailing locomotives because they are located behind the lead locomotive in the train. FRA sought and received comments concerning the relevance of listing "trailing locomotives" and "distributive power locomotives" in the rule text. Both commenters confirmed that distributive power locomotives are a type of trailing locomotive. Thus, distributive power locomotives are covered by this paragraph whether or not they are specifically mentioned, because they are covered by the term "trailing locomotive." FRA believes that it is unnecessary to list both terms and is removing the words "distributive power locomotive" in the final rule.

One commenter asked how FRA will enforce this rule when a trailing locomotive is switched to the lead en route. FRA agrees that this issue will benefit from clarification. A locomotive will be considered a lead locomotive anytime it is placed in the lead position of the consist. If a locomotive is switched into the lead en route, and the sanders are known to be inoperative, the fourteen day requirement prescribed in paragraph (b)(1) applies to that locomotive (along with the three other triggers contained in paragraph (b)(1)) starting on the day when it is switched to the lead. For purposes of counting the amount of days that the locomotive has been in the lead, the calendar day that the locomotive is switched into the lead will count as day one. The date that the locomotive is placed in the lead is required to be recorded on that locomotive's bad order tag. Updating the bad order tag on the day that the locomotive is switched to the lead, to reflect the date that the locomotive was switched to the lead, will ensure that the railroad and FRA will be able to conveniently know the status of that locomotive relative to the requirements of this rule.

Paragraph (c). This paragraph establishes requirements for handling locomotives used in switching service where sanders become inoperative. The Working Group and the full RSAC recommended that the use of sand on locomotives performing switching service should be distinguished from locomotives being used in road service as described above in paragraph (b). Included as part of the RSAC's recommendation to FRA in this area, was a request that FRA unilaterally develop criteria for the handling of locomotives being used in switching service that experience inoperative sanders. The request specifically related to the identification of what constitutes locomotives at "outlying locations" and the identification of the triggering events for repairing inoperative sanders on such locomotives. FRA accepted this recommendation. FRA considered the discussions and views provided by members of the Working Group when developing this portion of the rule.

Rather than attempt to define what constitutes an "outlying location," FRA believes that the most appropriate method of distinguishing between switching locomotives and the locations where they operate, is to base the determination on the existence of a sand delivery system at the location. FRA believes that locomotives being used in switching service at a location with a sand delivery system should be able to be maintained and handled for repair in a more timely manner, with less disruption to railroad operations, than locomotives being used in switching service at locations without sand delivery systems. If there is no sand delivery system at a location, then the railroad is required to send maintenance vehicles or crews to the location or is required to move the locomotive to another location to effectuate necessary repairs. This can have a significant impact on the efficiency and continuity of switching operations at certain locations. Thus, paragraphs (c)(1) and (c)(2) separate the requirements for maintaining the sanders on locomotives being used in switching service based on the presence of a sand delivery system at the location where the locomotive is being used.

Paragraph (c)(1). This paragraph contains requirements for handling locomotives being used in switching service at locations that are not equipped with a sand delivery system. In order to remain consistent with the overall design of the recommendation submitted by the RSAC, FRA believes that some operational flexibility needs to be provided to locomotives being used in switching service at locations not capable of quickly delivering sand or making necessary repairs. As noted above, the simplest way of making this determination is based on whether or not the location has a sand delivery system. FRA believes that seven days is a reasonable amount of time to permit railroads to provide necessary sander attention to a locomotive being used in switching service at a location that does not have a sand delivery system. This amount of time is consistent and within the time frame in which locomotives used in switching service will need some other type of maintenance or attention, most likely re-fueling. The seven day mark appears to be a reasonable outer-limit for the requirement. The second triggering event in this paragraph is if the locomotive becomes due for its periodic inspection pursuant to § 229.23 of this part.

In the NPRM, FRA solicited and received comments on this paragraph. While one commenter agreed that the proposed seven day time-line was reasonable; another commenter suggested dividing the requirement into two distinct groups to allow for more precise treatment. The commenter explained that a requirement based on a given number of days would be appropriate for the inoperative sanders that are inoperative because they lack sand, however, sanders that are inoperative due to a mechanical defect should be repaired sooner if mechanical forces have an opportunity to inspect the locomotive. This suggestion has some merit, but would likely overburden enforcement resources. Dividing the requirement into two categories would add another layer of complexity to the rule. Enforcing two separate categories would raise additional issues that require further FRA investigation. For example, FRA would need to find out why the sander is inoperative in order to determine how to properly enforce the requirement. FRA believes that the less complex scheme from the proposed rule will be more effective.

Paragraph (c)(2). This paragraph establishes requirements for handling locomotives used in switching service at locations equipped with a sand delivery system. FRA agrees with the opinions of the Working Group and full RSAC that sanders on these types of locomotives can be maintained with little burden on a railroad's operation as they are already at the location where sand can be delivered and effective repairs can be effectuated. Therefore, FRA accepts the RSAC's recommendation and retains the existing requirements applicable to these locomotives. Consequently, when sanders become inoperative on these locomotives they will have to be handled in accordance with the provisions contained in § 229.9.

Paragraph (d). This paragraph will ensure that any locomotive with inoperative sanders is properly tagged under the tagging provisions contained in § 229.9(a). As paragraphs (b) and (c)(1) provide railroads with more flexibility with regard to using a locomotive with inoperative sanders than what is currently permitted by § 229.9, FRA wants to ensure that proper notification and records are maintained on in-service locomotives with inoperative sanders. Thus, FRA will require that locomotives operating with defective sanders be tagged in

accordance with the provisions contained in § 229.9(a). This will also ensure that the individuals operating the locomotive are fully informed as to the fact that the locomotive they are operating does not have working sanders.

VII. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of cost and benefit streams expected from the adoption of this rule. For the twenty year period the estimated quantified costs are minimal. For this same period the estimated quantified benefits have a Net Present Value of $70.6 million.

The major benefits anticipated from implementing this rule include: A reduction in the number of times locomotives have sand loaded or the number of times the sanders are made operative. This reduction produces a reduction in injuries related to the operation of filling sand boxes on the locomotive and the number of missed days related to these injuries. Finally, the rule would harmonize the sander requirement with the Canadian rule by placing a fourteen day limit on service for lead locomotives being used in road service with inoperative sanders.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this rule. Document inspection and copying facilities are available at the Federal Docket Management Facility located at 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2005–23080.

"Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a railroad business "line-haul operation" that has fewer than 1,500 employees and a "switching and terminal" establishment with fewer than 500 employees. SBA's "size standards" may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. *See* 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity.

For this rule over 600 railroads could potentially be affected. The rule will impact all locomotives except those propelled by steam power. Given this application, only railroads that operate steam locomotives exclusively, will be unaffected. For those railroads that will be affected the impact will be minimal, if any. The focus is on permitting additional flexibility in the use of locomotives with inoperative sanders. It is anticipated that the additional flexibility will produce mostly positive impacts, i.e., savings and injury reductions.

The AISE developed in connection with this Final Rule concludes that this rule will not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Act requirements, FRA invited comments in the NPRM. No comments were received.

Paperwork Reduction Act

The rule contains a substantive change of one section of the existing regulation, § 229.131. The modification would not change the current information collection activity. The information collection burden associated with the final rule already exists under § 229.9. OMB clearance for the current rule has been granted and no further approval is sought at this time.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The OMB control number assigned for information collection related to this rule is OMB No. 2130–0004.

Federalism Implications

FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of the rule to FRA, has as permanent members two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this rule has no federalism implications, other than the preemption of state laws covering the subject matter of this rule, which occurs by operation of law under

49 U.S.C. 20106 whenever FRA issues a rule or order.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $132,300,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This rule will not result in the expenditure, in the aggregate, of $132,300,000 or more in any one year, and thus preparation of such a statement is not required.

Privacy Act

FRA wishes to inform all potential petitioners for reconsideration that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://www.regulations.gov*.

List of Subjects in 49 CFR Part 229

Locomotives, Railroad safety, and Sanders.

The Final Rule

■ For the reasons discussed in the preamble, FRA amends part 229 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

■ 2. Section 229.5 is amended by adding alphabetically the definitions of "initial terminal" and "sand delivery system" to read as follows:

§ 229.5 Definitions.

* * * * *

Initial terminal means a location where a train is originally assembled.

* * * * *

Sand delivery system means a permanently stationed or fixed device designed to deliver sand to locomotive sand boxes that do not require the sand to be manually delivered or loaded. A sand delivery system will be considered permanently stationed if it is at a location at least five days a week for at least eight hours per day.

* * * * *

■ 3. Section 229.9 is amended by revising paragraph (a) introductory text to read as follows:

§ 229.9 Movement of non-complying locomotives.

(a) Except as provided in paragraphs (b), (c), § 229.125(g), and § 229.131(b) and (c)(1), a locomotive with one or more conditions not in compliance with this part may be moved only as a lite locomotive or a dead locomotive after the carrier has complied with the following:

* * * * *

■ 4. Section 229.131 is revised to read as follows:

§ 229.131 Sanders.

(a) Prior to departure from an initial terminal, each locomotive, except for MU locomotives, shall be equipped with operative sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement or shall be handled in accordance with the requirements contained in § 229.9.

(b) A locomotive being used in road service with sanders that become inoperative after departure from an initial terminal shall be handled in accordance with the following:

(1) A lead locomotive being used in road service that experiences inoperative sanders after departure from an initial terminal may continue in service until the earliest of the following occurrences:

(i) Arrival at the next initial terminal;

(ii) arrival at a location where it is placed in a facility with a sand delivery system;

(iii) the next periodic inspection under § 229.23; or

(iv) fourteen calendar days from the date the sanders are first discovered to be inoperative; and

(2) A trailing locomotive being used in road service that experiences inoperative sanders after departure from an initial terminal may continue in service until the earliest of the following occurrence:

(i) Arrival at the next initial terminal;

(ii) arrival at a location where it is placed in a facility with a sand delivery system; or

(iii) the next periodic inspection under § 229.23.

(c) A locomotive being used in switching service shall be equipped with operative sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement. If the sanders become inoperative, the locomotive shall be handled in accordance with the following:

(1) A locomotive being used in switching service at a location not equipped with a sand delivery system

may continue in service for seven calendar days from the date the sanders are first discovered inoperative or until its next periodic inspection under § 229.23, which ever occurs first; and

(2) A locomotive being used in switching service at locations equipped with a sand delivery system shall be handled in accordance with the requirements contained in § 229.9.

(d) A locomotive being handled under the provisions contained in paragraph (b) and (c)(1) of this section shall be tagged in accordance with § 229.9(a).

Issued in Washington, DC, on October 16, 2007.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. E7–20656 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XD25

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2008

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

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (120 mm) for Atlantic surfclams for the 2008 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2008, through December 31, 2008.

ADDRESSES: Written inquiries may be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2007 meeting, the Mid-Atlantic Fishery Management Council voted to recommend that the Regional Administrator suspend the minimum size limit for the 2008, 2009, and 2010 fishing years. In accordance with the provisions of the FMP, the Regional Administrator will publish the suspension of the surfclam minimum size if the proportion of undersized surfclams is under 30 percent of the total surfclam landings for each fishing year.

Commercial surfclam data for 2007 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 8.99–percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2008.

Classification

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

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

Dated: October 12, 2007.

Emily H. Menashes,

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

[FR Doc. E7–20639 Filed 10–18–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 202
Friday, October 19, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29316; Directorate Identifier 2007–CE–078–AD]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aviation Corporation Model EA500 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2007–13–11, which applies to all Eclipse Aviation Corporation (Eclipse) Model EA500 airplanes. AD 2007–13–11 was prompted by reports of loss of primary airspeed indication due to freezing condensation within the pitot system. AD 2007–13–11 requires operational limitations consisting of operation only in day visual flight rules (VFR), allowing only a VFR flight plan, and maintaining operation with two pilots. Since we issued AD 2007–13–11, Eclipse has developed a design modification to the pitot/angle-of-attack (AOA) system to eliminate the possibility of freezing condensation within the pitot/AOA system. Eclipse is incorporating this modification during production on Model EA500 airplanes starting with serial number (S/N) 000065. Consequently, this proposed AD would limit the applicability to airplanes under S/N 000065 and require incorporating the modification. This proposed AD would also retain the operating limitations in AD 2007–13–11 until the modification is incorporated. We are proposing this AD to prevent long-term reliance on special operating limitations when a design change exists that would eliminate the need for the operating limitations. Incorporating the proposed modification would prevent loss of air pressure in the pitot system, which could cause erroneous AOA and airspeed information with consequent loss of control.

DATES: We must receive comments on this proposed AD by December 18, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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 proposed AD, contact Eclipse Aviation Corporation, 2503 Clark Carr Loop, SE., Albuquerque, NM 87105, fax: 505–241–8802; e-mail: *customercare@eclipseaviation.com*.

FOR FURTHER INFORMATION CONTACT: Al Wilson, Flight Test Pilot, Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone: (817) 222–5146; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2007–29316; Directorate Identifier 2007–CE–078–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 concerning this proposed AD.

Discussion

Reports of three instances of loss of primary airspeed indication due to freezing condensation within the pitot system on Eclipse Model EA500 airplanes caused us to issue AD 2007–13–11, Amendment 39–15115 (72 FR 34363, June 22, 2007). The loss of air pressure in the pitot system could cause the stall warning to become unreliable and the stick pusher, overspeed warning, and autopilot to not function. The concern is heightened by the aerodynamic characteristics of the Eclipse Model EA500 airplane, which relies on the stall warning and the stick pusher to alert the pilot prior to the loss of aircraft control. The standby airspeed is reliable and not affected by this failure mode.

AD 2007–13–11 currently requires the following on all Eclipse Model EA500 airplanes:

- Incorporating information into the Limitations section of the airplane flight manual (AFM) requiring operation only in day VFR;
- Allowing only a VFR flight plan; and
- Maintaining operation with two pilots.

AD 2007–13–11 was considered an interim action until Eclipse could develop a design modification to the pitot/AOA system that will eliminate the possibility of freezing condensation within the pitot/AOA system.

Eclipse has now developed this design modification and it is being incorporated at the factory during production on Model EA500 airplanes starting with S/N 000065.

We have determined that continued reliance on operating limitations carries an unnecessary safety risk when there is a known design change to eliminate the need for the operating limitations. Incorporating the proposed modification would prevent loss of air pressure in the pitot system, which could cause erroneous AOA and airspeed information with consequent loss of control.

Relevant Service Information

We have reviewed Eclipse Aviation Alert Service Bulletin Number SB 500–34–005, Rev B, issued July 10, 2007.

The service information describes procedures for upgrading the pitot/AOA

system and modifying the related tubing assembly, which terminates the operating limitations required in AD 2007–13–11 when incorporated.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2007–13–11 with a new AD that would change the Applicability section and would require you to incorporate the design modification of the pitot/AOA system. This proposed AD would also retain the operating limitations in AD 2007–13–11 until the modification is incorporated. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 64 airplanes in the U.S. registry.

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
30 work-hours × $80 per hour = $2,400	$7,000	$9,400	$601,600

Warranty credit will be given to the extent specified in the service bulletin.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–13–11, Amendment 39–15115 (72 FR 34363, June 22, 2007), and adding the following new AD:

Eclipse Aviation Corporation: Docket No. FAA–2007–29316; Directorate Identifier 2007–CE–078–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 18, 2007.

Affected ADs

(b) This AD supersedes AD 2007–13–11, Amendment 39–15115.

Applicability

(c) This AD applies to Model EA500 airplanes, serial numbers 000001 through 000064, that are certificated in any category.

Unsafe Condition

(d) Reports of three instances of loss of primary airspeed indication due to freezing condensation within the pitot system prompted us to issue AD 2007–13–11. This AD results from Eclipse developing a design modification to the pitot/angle-of-attack (AOA) system that eliminates the possibility of freezing condensation within the pitot/AOA system. Eclipse is incorporating this modification during production on Model EA500 airplanes starting with serial number 000065. We are issuing this AD to prevent long-term reliance on special operating limitations when a design change exists that would eliminate the need for the operating limitations. Incorporating the modification would prevent loss of air pressure in the pitot system, which could cause erroneous AOA and airspeed information with consequent loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Incorporate the following into the Limitations section of the airplane flight manual (AFM): (i) "Operate Only in Day Visual Flight Rules (VFR);" (ii) "File Only a VFR Flight Plan;" and (iii) "Operate with Two Pilots at All Times."	Before further flight after June 27, 2007 (the effective date of AD 2007–13–11).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the AFM as specified in paragraph (e)(1) of this AD. You may insert a copy of this AD into the Limitations section of the AFM to comply with this action. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Incorporate the design modification to the pitot/AOA system. When incorporated, this design modification terminates the Airplane Flight Manual (AFM) operational limitations required in paragraph (e)(1) of this AD.	Within the next 60 days after the effective date of this AD.	Following Eclipse Aviation Alert Service Bulletin Number SB 500–34–005, Rev B, issued July 10, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Al Wilson, Flight Test Pilot, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone: (817) 222–5146; fax: (817) 222–5960. 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.

(g) AMOCs approved for AD 2007–13–11 are approved for this AD.

Related Information

(h) To get copies of the service information referenced in this AD, contact Eclipse Aviation Corporation, 2503 Clark Carr Loop, SE, Albuquerque, NM 87105, fax: 505–241–8802; e-mail: *customercare@eclipseaviation.com*. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is Docket No.FAA–2007–29316; Directorate Identifier 2007–CE–078–AD.

Issued in Kansas City, Missouri, on October 15, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20630 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29342; Directorate Identifier 2007–SW–08–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model 600N helicopters. That AD currently requires interim initial and repetitive inspections of tailboom parts, installing six inspection holes in the aft fuselage skin panels, installing tailboom attachment bolt washers, modifying both access covers, and replacing broken attachment bolts. The current AD also provides for modifying the fuselage aft section as an optional terminating action. This proposal would mandate modifying the fuselage aft section within the next 24 months to strengthen the tailboom attachment fittings and upper longerons. The actions specified by the proposed AD are intended to prevent failure of the tailboom attachment fittings, separation of the tailboom from the helicopter, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 18, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the web at *www.mdhelicopters.com*.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2007–29342, Directorate Identifier 2007–SW–08–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of

the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov*.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On April 20, 2006, we issued AD 2006–08–12, Amendment 39–14569 (71 FR 24808, April 27, 2006), which superseded AD 2001–24–51, Amendment 39–12706 (67 FR 17934, April 12, 2002). AD 2001–24–51 required inspecting both the upper tailboom attachment fittings, nut plates, and both angles for a crack or thread damage, and repairing or replacing any cracked or damaged part. That AD also required replacing the upper right tailboom attachment bolt with a new bolt. That AD required if the attachment bolt was broken replacing the three remaining attachment bolts with airworthy attachment bolts. Adding a washer to each bolt and modifying both access covers was also required. Thereafter, inspecting the upper tailboom attachments at intervals not to exceed 25 hours time-in-service and repairing or replacing any cracked part was required. Superseding AD 2006–08–12 requires installing six inspection holes in the aft fuselage skin panels, inspecting the tailboom attachment fittings and parts, and replacing or modifying certain parts as necessary. That action was prompted by an accident involving a Model 600N helicopter. The requirements of that AD are intended to prevent failure of the tailboom and subsequent loss of control of the helicopter.

On January 12, 2004, MDHI issued Technical Bulletin (TB) TB600N–007 specifying procedures, tooling, replacement parts, and supplies needed for modifying the fuselage aft section and tailboom. TB600N–007R1, dated April 13, 2006, superseded TB600N–007 to correct some tooling, replacement parts, and supplies. TB600N–007R2, dated October 5, 2006, superseded TB600N–007R1 to correct tooling part numbers and re-sequence some assembly steps. These TBs specify that any aircraft complying with any of these revisions meets the intent of the other TBs.

In AD 2006–08–12, we incorporated by reference TB600N–007R1, dated April 13, 2006. Since issuing that AD, MDHI has issued TB600N–007R2, dated October 5, 2006 (TB), which updates previous issues by further specifying procedures for modifying the fuselage aft section to strengthen the tailboom attachment fittings and upper longerons. This latest revision continues to caution that a high level of sheet metal expertise and experience is required to perform this modification.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would supersede AD 2006–08–12 to require within the next 24 months, modifying the fuselage aft section to strengthen tailboom attach fittings and upper longerons, which would constitute terminating action for this unsafe condition.

We estimate that this proposed AD would affect 18 helicopters of U.S. registry, and the proposed actions would take about 322 work hours to modify each helicopter at an average labor rate of $80 per work hour. Required parts would cost about $14,960 per helicopter. The manufacturer states in its TB that those complying with the TB within 3 years of the issue date are eligible for special pricing and technical assistance. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $732,960, assuming no special pricing from the manufacturer.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–14569, AD 2006–08–12, (71 FR 24808, April 27,

2006), and by adding a new airworthiness directive (AD), to read as follows:

MD Helicopter, Inc.: Docket No. FAA–2007–29342, Directorate Identifier 2007–SW–08–AD. Supersedes AD 2006–08–12, Amendment 39–14569, Docket No. FAA–2006–24518, Directorate Identifier 2006–SW–10–AD.

Applicability: Model 600N helicopters, serial numbers with a prefix "RN" and 003 through 058, that have not been modified in the fuselage aft section to strengthen the tailboom attachments and longerons per MD Helicopters (MDHI) Technical Bulletin (TB) TB600N–007, dated January 12, 2004; TB600N–007R1, dated April 13, 2006, or TB600N–007R2, dated October 5, 2006, certificated in any category.

Compliance: Required within the next 24 months, unless accomplished previously.

To prevent failure of the tailboom attachment fittings, separation of the tailboom from the helicopter, and subsequent loss of control of the helicopter, do the following:

(a) Modify the fuselage aft section to strengthen the tailboom attach fittings and upper longerons by following paragraph 2, Accomplishment Instructions, of MDHI TB600N–007R2, dated October 5, 2006, except you are not required to contact the manufacturer. This modification to the fuselage aft section is terminating action for the requirements of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Jon Mowery, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on October 10, 2007.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–20680 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0056; Directorate Identifier 2007–SW–06–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC130 B4 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France Model EC130B4 helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The aviation authority of France, with which we have a bilateral agreement, states in the MCAI:

This Airworthiness Directive (AD) is issued following the discovery of several cases of loosened rivets in the tube-to-flange attachment of the tail rotor drive center section shaft.

In one case, this loosening of rivets was associated with a crack in the tube which started from a loosened-rivet hole.

These occurrences can lead to failure of the tail rotor drive center section shaft.

The proposed AD would require actions that are intended to address the unsafe condition caused by cracks and loosened rivets in the tube-to-flange attachment of the tail rotor and the unsafe condition caused by the out-of-perpendicularity of the No. 1 bearing.

DATES: We must receive comments on this proposed AD by November 19, 2007.

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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–0056; Directorate Identifier 2007–SW–06–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued an MCAI in the form of EASA Airworthiness Directive No. F–2005–190, dated November 23, 2005 (referred to after this as "the MCAI"), to correct an unsafe condition for this French-certificated product. The MCAI states:

This Airworthiness Directive (AD) is issued following the discovery of several cases of loosened rivets in the tube-to-flange

attachment of the tail rotor drive center section shaft.

In one case, this loosening of rivets was associated with a crack in the tube which started from a loosened-rivet hole.

These occurrences can lead to failure of the tail rotor drive center section shaft.

You may obtain further information by examining the MCAI and service information in the AD docket.

Relevant Service Information

Eurocopter has issued Alert Service Bulletin No. 65A002, dated November 16, 2005. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Proposed Requirements

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in the "FAA Differences" section in the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 68 helicopters of U.S. registry and that it would take about 1 work-hour per helicopter to determine if there are any cracks or loosened rivets in the tube-to-flange attachment of the tail rotor drive center section shaft and to determine if the No. 1 bearing is out-of-perpendicularity. Also, we estimate that it would take about 4 work-hours per helicopter to remove and replace any nonconforming parts. The average labor rate is $80 per work-hour. Required parts would cost about $15,007 per helicopter if replacing a tail rotor drive center section shaft is necessary. Based on these figures, we estimate the cost to inspect the fleet of helicopters to be $5,440. Assuming 3 helicopters are found to have nonconforming parts, we estimate the costs to replace these parts to be $45,981, resulting in the total cost of the proposed AD on U.S. operators to be $51,421.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2007–0056; Directorate Identifier 2007–SW–06–AD.

Comments Due Date

(a) We must receive comments by November 19, 2007.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC130 B4 helicopters, with a tail rotor drive center section shaft, part number (P/N) 350A340202; and bearing, P/N 593404, certificated in any category.

Reason

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

This Airworthiness Directive (AD) is issued following the discovery of several cases of loosened rivets in the tube-to-flange attachment of the tail rotor drive center section shaft.

In one case, this loosening of rivets was associated with a crack in the tube which started from a loosened-rivet hole.

These occurrences can lead to failure of the tail rotor drive center section shaft.

Actions and Compliance

(e) Within 50 hours time-in-service (TIS) or 3 months, whichever occurs first, unless already done, do the following actions.

(1) Inspect for cracks or loosened rivets in the tube-to-flange attachment of the tail rotor drive center section shaft and inspect the perpendicularity of bearing No. 1 in compliance with the Accomplishment Instructions, paragraph 2.B.2., of Eurocopter Alert Service Bulletin No. 65A002, dated November 16, 2005 (ASB).

(2) If a crack or loosened rivet is found, replace the tail rotor drive center section shaft before further flight.

(3) If the out-of perpendicularity of the bearing is more than 0.1 mm, apply the corrective procedure described in the Accomplishment Instructions, paragraph 2.B.2., of the ASB.

Differences Between the FAA AD and the MCAI

(f) None.

Subject

(g) Air Transport Association of America (ATA) Code 65, Tail rotor drive—tail rotor drive shaft.

Other Information

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ed Cuevas, Aviation Safety Engineer, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

(2) Airworthy Product: Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) MCAI European Aviation Safety Agency (EASA) Airworthiness Directive No. F–2005–190, Revision A, dated November 23, 2005, and Eurocopter Alert Service Bulletin No. 65A002, dated November 16, 2005, contain related information.

Issued in Fort Worth, Texas, on October 11, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–20684 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 744, 748, 754, 764 and 772

[Docket No. 0612242559–7061–01]

RIN 0694–AD94

Mandatory Electronic Filing of Export and Reexport License Applications, Classification Requests, Encryption Review Requests, and License Exception AGR Notifications

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require that export and reexport license applications, classification requests, encryption review requests, License Exception AGR notifications and related documents be submitted to the Bureau of Industry and Security (BIS) via its Simplified Network Application Process (SNAP–R) system. This requirement would not apply to applications for Special Comprehensive Licenses or in certain situations in which BIS would authorize paper submissions.

DATES: Comments must be received by December 18, 2007.

ADDRESSES: Comments on this proposed rule may be submitted via *http://www.regulations.gov.* Scroll down to the heading "Search Documents." At Step 1, select "Documents Accepting Comments" then, at Optional Step 2, select from the pull down menu "Bureau of Industry and Security" and click on the "Submit" button. On the resulting screen, select docket number BIS–2007–0002. Click on the yellow comment icon. You may either type your comments directly on the on-line comment form or "attach" a file containing your comments. Regulations.gov accepts most popular document file formats. Comments may also be e-mailed to BIS at publiccomments@bis.doc.gov (please refer to regulatory identification number (RIN) 0694–AD94 in the subject line) or submitted on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Please refer to RIN 0694–AD94 in all paper comments.

FOR FURTHER INFORMATION CONTACT: William Arvin e-mail *warvin@bis.doc.gov* or tel. 202 482 2440.

SUPPLEMENTARY INFORMATION:

Background

BIS administers a system of export and reexport controls in accordance with the Export Administration Regulations (EAR). In doing so, BIS requires that parties wishing to engage in certain transactions apply for licenses, submit encryption review requests, or submit certain notifications to BIS. BIS also reviews, upon request, specifications of various items and determines their proper classification under the EAR. Currently members of the public submit these applications, requests and notifications to BIS in one of three ways: via SNAP–R, via BIS's Electronic License Application Information Network (ELAIN), or via the paper BIS Multipurpose Application Form BIS 748–P and its two appendices, the BIS 748–P A (item appendix) and the BIS 748–P B (end user appendix). In many instances, BIS needs additional documents to act on the submission. For documents that relate to paper submissions, the documents can be mailed or delivered to BIS with the BIS 748–P form. For submissions made electronically via ELAIN, the documents must be sent to BIS separately and matched up with the application when they arrive.

In 2006, BIS made a number of improvements its then existing Simplified Network Application Processing system (SNAP), and designated this improved version as "SNAP–R". The improvements include the ability to include documents related to a submission in the form of PDF (portable document format) files as "attachments" to the submission. Other improvements include a feature that allows BIS personnel to request additional information from the submitting party and for the party to submit that information in a manner that ties the chain of communication to the submission.

BIS believes that use of SNAP–R will reduce processing times and simplify compliance with and administration of export controls. SNAP–R provides not only improved efficiency in submission and processing, but improved end-user security through rights management and an updated application and security infrastructure.

Therefore, BIS proposes to require that all export and reexport license applications (other than Special Comprehensive License applications), classification requests, encryption review requests, License Exception AGR notifications, and "attached" related documents be submitted to BIS via its Simplified Network Application Process (SNAP–R) system unless BIS authorizes paper submissions. This proposed rule would also set the criteria by which BIS would authorize paper submissions and would terminate use of ELAIN. This proposed rule would make no changes to the procedures by which the public requests advisory opinions because such requests are not processed via either the paper form 748–P or either of BIS's existing electronic systems.

Changes Proposed To Be Made by This Rule

The changes that this proposed rule would make center on part 748 of the EAR, which sets forth the principal procedures governing the submission of the applications, review requests and notifications that would be affected by this proposed rule. The changes would appear in § 748.1—"General provisions," § 748.3—"Classification requests, advisory opinions, and

encryption review requests," and in § 748.6—"General instructions for license applications." The rule would also make conforming changes to a number of EAR provisions that currently employ language related to the paper forms.

Substantive Changes

Section 748.1 would be revised to emphasize electronic filing over paper and to set forth the basic requirement that license applications (other than Special Comprehensive License applications), encryption review requests, License Exception AGR notifications, and classification requests and any accompanying documents must be submitted via SNAP-R unless BIS authorizes submission via paper. Revised section 748.1 would continue to specify that for paper submissions, only original BIS paper forms may be used and that reproductions or facsimiles are not acceptable.

Section 748.1 would also set forth the criteria under which BIS would authorize paper submissions. Those criteria are: (1) BIS has received no more than one submission from the party in the twelve months immediately preceding the current submission, *i.e.*, the combined total of the party's license applications (other than Special Comprehensive Licenses), encryption review requests, License Exception AGR notifications, and classification requests could not exceed one; (2) the party does not have access to the Internet; (3) BIS has rejected the party's electronic filing registration or revoked its eligibility to file electronically; (4) BIS has requested that the party submit on paper for a particular transaction; or (5) BIS has determined that urgency, a need to implement government policy or a circumstance outside the submitting party's control justify allowing paper submissions on a particular instance.

Parties who wished to submit on paper would submit the BIS Form 748–P. In addition to the information relevant to the substance of the submission itself, the submitter would be required to include, either on the form or as an attachment, a statement explaining which of the five foregoing criteria justify a paper submission and supporting information. If BIS agreed that at least one of the criteria were met, it would process the submission in accordance with its regular procedures. If BIS found that none of the criteria provided by the submitter was met, it would return the form without action and inform the submitter of the reason for rejecting the request to file on paper. A decision by BIS to reject the request to file on paper is subject to appeal under part 756 of the EAR. This proposed rule also would move the address for paper submissions from § 748.2 to § 748.1.

Section 748.3 would be revised to replace instructions about where and how to submit classification requests, with a reference to the procedures in § 748.1. Section 748.3 would continue to state requirements about the kinds of information that must be included in classification requests.

Section 748.6 would be revised to require that any documents submitted in support of any license application submitted via SNAP–R be submitted via the SNAP–R system as PDF (portable document format) files. Section 748.6 also would be revised to remove the statement that application control numbers are preprinted on the paper forms. The paper forms will continue to bear a preprinted application control number, but for electronic submissions, application control numbers are communicated to the submitter electronically once BIS accepts the submission.

Conforming Changes

A number of EAR provisions currently state that a particular submission must be made on the BIS 748–P paper form or state that it must be either on the 748–P or its electronic equivalent. If such a provision refers to a classification request or encryption review request, this proposed rule would revise that provision to state that the submission must be made in accordance with §§ 748.1 and 748.3. If such a provision refers to a license application (other than a Special Comprehensive License application), this proposed rule also would revise that provision to state that the submission must be in accordance with §§ 748.1, 748.4 and 748.6. The changes described in this paragraph would be made in:

- § 740.8(b)(2), relating to classification requests pursuant to License Exception "Key Management Infrastructure (KMI)";
- § 740.9(a)(4)(i) and (iii), relating to authorizations to sell or dispose of or to retain abroad more than one year items exported under License Exception "Temporary imports, exports and reexports (TMP)";
- § 740.12(a)(2)(iii)(C), relating to applications to exceed the frequency limits for individual gift parcels under license exception "Gift parcels and humanitarian donations (GFT)";
- § 740.17(d)(1), relating to the submission of encryption review requests under License Exception "Encryption commodities and software" (ENC);
- § 742.15(b)(2)(i), relating to submission of review requests for certain encryption items; Supplement No. 6 to part 742, relating to submission of review requests for certain "mass market" encryption commodities and software;
- § 754.2(g)(1), relating applications for export of certain California crude oil;
- § 754.4(d)(1), relating to applications to export unprocessed Western Red Cedar; and
- § 764.7(b)(2)(i), relating to applications to take certain actions with respect to certain items in Libya.

This proposed rule would replace the requirement to use the form BIS 748–P in § 740.18(c)(2) when submitting notice to the government in advance of shipments under License Exception "Agricultural Commodities (AGR)" with a requirement to submit such notices in accordance with § 748.1 of the EAR.

This proposed rule also would replace references to the BIS 748–P Multipurpose Application Form with the word "application" in provisions that describe certain information that must be submitted with particular types of license applications. This change emphasizes that the same information is required regardless of whether an application is submitted on paper or electronically. The change described in this paragraph would be made in:

- § 744.21(d), relating to applications to export or reexport certain items to known military end-uses in the People's Republic of China;
- § 748.4(b)(2)(ii), relating to written authority of certain agents to submit on a principal's behalf;
- § 754.4(d)(2) and (d)(3), relating to applications for export of unprocessed western red cedar;
- § 754.5(b)(2), relating to applications to export horses by sea; and
- § 772.1, definition of "Other party authorized to receive license."

This proposed rule also would remove the reference to date time stamping in § 754.2(g)(5)(i) by BIS of applications to export crude oil because that process occurs only with paper applications. However, the proposed rule would retain the policy in § 754.2(g)(5)(i) of issuing licenses for approved applications in the order in which the applications are received.

This proposed rule would also change the reference currently found in § 748.3 to the section containing the address for submitting advisory opinion requests from 748.2 to 748.1.

Public Comments

BIS will consider all comments received on or before December 18, 2007. BIS will consider comments received after that date if possible but cannot assure such consideration. All public comments on this proposed rule must be in writing (writing includes electronic submission of comments via *www.regulations.gov* or e-mail directly to BIS) and will be a matter of public record, available for public inspection and copying on the *www.regulations.gov* Web site under docket number BIS–2007–0002.

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. This proposed rule would require persons seeking authorization to submit paper filings to state, either in the additional information block on the paper form or an attachment, which of the criteria for paper submissions they meet and the reasons therefore. BIS believes that requests seeking authorization to submit paper filings would impose a minimal burden on applicants as the information requirements are small and the number of requests is expected to be low. Applicants making a request would identify one or more of the 5 criteria under which BIS would authorize a paper submission, and provide the factual basis for the authorization to submit on paper. BIS estimates that only a small number of submissions will seek authorization to file on paper. Based on current information on submissions, more than 85% of all submissions affected by this rule are currently transmitted to BIS via SNAP–R. Therefore, BIS estimates that this requirement will make no material change of the estimated time of 58 minutes needed to prepare and submit a BIS–748. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Number of Small Entities Affected

BIS does not collect data on the size of entities that file these submissions. However, based on the information that it does possess, BIS believes that fewer than 1340 small entities are likely to be affected by this rule. BIS arrived at this conclusion by identifying all of the entities that filed two or more submissions during the period from January 1, 2006 through December 31, 2006. A total of 1592 such entities were identified. BIS determined that 252 of these are not small entities because they could be identified through open public sources as having more than $100 million in annual sales or more than 5,000 employees or because they are United States Government agencies.

Because many industries may be involved in exporting, BIS could not directly relate its data to the "Small Business Size Standards Matched to North American Industry Classification System" (the Standards Table) published by the Small Business Administration (SBA). However, BIS notes that the Standards Table designates business as small based on either sales or number of employees, depending on the industry. The maximum annual sales and maximum number of employees listed in that document are $31 million and 1,500, respectively. Both numbers are far below the threshold selected by BIS in arriving at the number of 1340 as the maximum number of small entities likely to be affected by this rule. Quite likely many of the 1340 remaining entities would be larger than the largest business listed in the Standards Table.

In addition, most of the categories in the Standards Table for which the sales limit is more than $6.5 million are unlikely to be impacted by this rule because they are unlikely to engage in export or reexport transactions that require specific authorization from BIS. Examples of small entities at the higher end of the range of the Standards Table include, Forest Fire Suppression—$16.5 million, New Single-Family Housing Construction Contractors—$31.0 million and Gasoline Stations with Convenience Stores—$25.0 million.

Burden Incurred

Some entities might incur no additional burden because of this rule. These are the entities whose submissions require no accompanying documents, those who are already creating the documents in PDF and those who are already creating the documents using software that is capable of producing the same documents in PDF. BIS does not have data on the number of entities that would incur no burden, but based on a sample of submissions of the type to which this proposed rule would apply for the period October 15, 2006 through March 9, 2007, BIS estimates that about 48 percent of the submissions would not require any accompanying documents.

Some entities might incur only a software acquisition burden because of this rule. These are the entities whose accompanying documents are already created using software that cannot produce PDF files directly, but that can produce such files with additional software that the entity can purchase. BIS estimates that such an entity with a small operation would incur an initial expense of approximately $325 to acquire that software necessary to comply with this rule. This estimate is based on the price of Adobe Acrobat® Standard Edition ($299) as posted on the Adobe Corporation Web site on December 27, 2006, plus any taxes or shipping charges.

Some entities might need to scan paper documents and convert them to PDF files. Such entities would have three alternatives: Pay someone else to scan and convert the documents; acquire a scanner with built-in PDF capability; or acquire hardware and software to scan in and convert the documents.

An entity with a small number of documents to scan probably would find it most economical to pay someone else to scan the paper documents and convert them to PDF files. After reviewing some prices charged in the Washington area, BIS estimates that the costs would range from about $19 to about $31 to convert eight pages of paper documents to PDF format.

In some instances, the entity could utilize software that comes bundled

with a scanner to comply with this requirement. In such instances, BIS estimates that the entity would incur an initial cost of approximately $500 (to purchase the scanner) to comply with this rule.

In some cases, particularly if the entity has to scan numerous complex paper documents, the costs could be higher. BIS estimates that the initial costs for an entity facing such a situation would be approximately $900. This estimate is based on a price of $300 for Adobe Acrobat® Standard Edition software, $500 for a scanner, and $100 for taxes and shipping charges.

Entities that have to scan paper documents may incur labor costs to scan and convert the documents to PDF. BIS estimates that scanning and converting a document page would take from 2 minutes to 10 minutes per page depending on the scanner and computer performance. BIS recently sampled the submissions that had accompanying documents for the months of February and March 2006. A total of 703 submissions had accompanying documents. Some submissions had only one accompanying page. The average number of accompanying pages for these 703 submissions was 8.5 and the largest number of accompanying pages for any one submission was 284. However, BIS has no way of determining which attachments could be generated electronically and which would require scanning. Assuming an average of 8.5 pages per document and labor costs for documents at $15 per hour, this cost could range from about $0.50 for one accompanying page that took two minutes to scan to $720 for a 284-page document that took 10 minutes per page to scan. Assuming an average scanning time of 5 minutes per page and an 8.5 as the average number of pages scanned, the average estimated labor cost for scanning would be $10.63.

Cost Reductions To Offset the Burdens

A party not using the electronic "attachment" feature of SNAP–R would have to submit any required documents by paper. In many instances, such a party would incur labor costs to copy the documents that are comparable to those incurred when scanning a document to produce a PDF file. For such parties, any increased scanning costs incurred by using SNAP–R would be offset by decreased copying costs.

Electronic filing can reduce costs in other ways as well. Currently, in many instances, attachments are submitted to BIS by overnight courier. Electronic filing would eliminate these courier costs. Collectively, the 1592 entities that made two or more submissions in 2006 provided 22,223 submissions. The largest number from any one submitter was 911, the smallest number from any one submitter was 2, and the average number per submitter was 14. Assuming an average cost of $20.00 to submit documents by courier, and further assuming that about 52 percent of the submissions required accompanying documents, the aggregate savings provided by electronic submission of accompanying documents would be $231,119 for the largest submitter, $146 for a submitter of the average number of submissions and $20 for a submitter of 2 submissions. In addition SNAP–R will provide the submitter with automatic confirmation of receipt of the documents by BIS. In many instances, couriers charge extra for delivery confirmation.

Further savings would be achieved if a particular set of documents applied to more than one submission. A party using SNAP–R would need to submit the documents only once and could reference them in subsequent submissions to which they apply whereas a party submitting via paper would have to submit new paper copies each time. Applicants for successive export licenses to ship the same items repeatedly could experience substantial savings from this feature of SNAP–R.

The SNAP–R system groups all communications between exporter and BIS for each electronic application, including supporting documents so that they can be viewed from within the SNAP–R application by all authorized personnel of the submitter. This feature allows for easier reassignment of work when necessary due, for example, to employee absences, resignations, or retirements, than a system in which users have to manage their own documentation and transcribe their communications with the licensing officers and correlate those communications with paper submissions of supporting documents.

Electronic filing can reduce costs to the submitters and to the government by reducing paper handling and delays incurred when moving paper through the system. Currently, BIS uses an electronic system to process all submissions that are subject to this proposed rule, whether it receives the submission on paper or electronically. However, if the attachments are on paper, delays ensue as paper documents are moved to the technical personnel in BIS and in other government agencies whereas electronic attachments can be transmitted to the appropriate personnel almost instantly. Electronic attachments are likely to reduce the total time from submission to final decision by several days. Although the benefit of faster processing times is difficult to quantify, the information that BIS possesses indicates that, in the aggregate, the potential benefit is quite large. In calendar year 2006, BIS processed 18,941 license applications with an aggregate value of $36 billion. Assuming a six percent annual rate of return for alternative investments, the opportunity cost of holding $36 billion worth of merchandise in inventory while waiting for a government decision on whether the transaction may proceed would be $2.16 billion annually or $5.9 million per day. Dividing $5.9 million by the number of applications, 18,941, provides an inferred average opportunity cost of $311 for each day that processing of an application is delayed.

Conclusion

BIS is unable to determine whether or not the number of small entities likely to be affected by this is rule is substantial. However, for any small entities that are affected, the savings from re-use of documents for multiple submissions, reduced courier fees and faster processing times are likely to fully or partially compensate for the cost of compliance with this rule. Thus the economic impact of this rule on such entities is not significant.

List of Subjects

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 772

Exports.

Accordingly, parts 740, 742, 748, 754, 764 and 772 of the Export Administration Regulations (15 CFR 730–774) are proposed to be amended as follows:

PART 740—[AMENDED]

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

2. In § 740.8 revise paragraph (b)(2) to read as follows:

§ 740.8 Key management infrastructure (KMI).

* * * * *

(b) *Eligible commodities and software.* * * *

(2) For such classification requests, indicate "License Exception KMI" in Block 9 on the application. Submit the request to BIS in accordance with §§ 748.1 and 748.3 of the EAR and send a copy of the request to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Fort Meade, MD 20755–6000

* * * * *

3. In § 740.9 revise the first sentences of paragraphs (a)(4)(i) and (a)(4)(iii) to read as follows:

§ 740.9 Temporary imports, exports and reexports (TMP).

* * * * *

(a) * * *

(4) * * *

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter or reexporter must request authorization by submitting a license application to BIS in accordance with §§ 748.1, 748.4 and 748.6 of the EAR. * * *

* * * * *

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 12 month period. * * *

* * * * *

4. In § 740.12, revise paragraph (a)(2)(iii)(C) to read as follows:

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) * * *

(2) * * *

(iii)* * *

(C) Parties seeking authorization to exceed these frequency limits due to compelling humanitarian concerns (e.g., for certain gifts of medicine) should submit a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS with complete justification.

* * * * *

5. In § 740.17 revise the paragraph (d)(1) to read as follows:

§ 740.17 Encryption commodities and software (ENC).

* * * * *

(d) * * *

(1) *Instructions for requesting review.* Review requests submitted to BIS must be submitted as described in §§ 748.1 and 748.3 of the EAR. See paragraph (e)(5)(ii) of this section for the mailing address for the ENC Encryption Request Coordinator. To ensure that your review request is properly routed, insert the phrase "License Exception ENC" in Block 9 (Special Purpose) of the application. Also, place an "X" in the box marked "Classification Request" in Block 5 (Type of Application) of Form BIS–748P or select "Commodity Classification" if filing electronically. Neither the electronic nor paper forms provide a separate block to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request.

* * * * *

6. In § 740.18 revise paragraph (c)(2) to read as follows:

§ 740.18 Agricultural commodities (AGR).

* * * * *

(c) *Prior notification.* * * *

(2) Procedures. You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed application in accordance with § 748.1 of the EAR. The following blocks must be completed, as appropriate: Blocks 1, 2, 3, 4, 5 (by marking box 5 "Other"), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BIS has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in Block 22(d). BIS will not initiate the registration of an AGR notification unless the application is complete.

* * * * *

PART 742—[AMENDED]

7. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. App. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

8. In § 742.5, revise paragraph (b)(2)(i) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) *Notification and review requirements for encryption items controlled under ECCN 5A992, 5D992 or 5E992.* * * *

(2) Review requirement for mass market encryption commodities and software exceeding 64 bits: * * *

(i) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement No. 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 ("Information Security"), of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). Submit review requests to BIS in accordance with §§ 748.1 and 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase "Mass market encryption" in Block 9 (Special Purpose) and place an "X" in the box marked "Classification Request" in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(5)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (e.g., because of missing or incomplete support documentation).

* * * * *

9. In Supplement No. 6 to Part 742 revise the first sentence to read as follows:

Supplement No. 6 to Part 742—Guidelines for Submitting Review Requests for Encryption Items

Review requests for encryption items must include all of the documentation described in this supplement and submitted to BIS in accordance with §§ 748.1 and 748.3 of the EAR. * * *

* * * * *

PART 744—[AMENDED]

10. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

11. Revise § 744.21(d) to read as follows:

§ 744.21 Restrictions on certain military end-uses in the People's Republic of China.

* * * * *

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the "additional information" block of the application that "this application is submitted because of the license requirement in § 744.21 of the EAR (Restrictions on Certain Military End-uses in the People's Republic of China)." In addition, either in the additional information block or in an attachment to the application, you must include all known information concerning the military end-use of the item(s). If you submit an attachment with your license application, you must reference the attachment in the "additional information" block of the application.

* * * * *

PART 748—[AMENDED]

12. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

13. In § 748.1, revise paragraph (a) and add a paragraph (d) to read as follows:

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the Export Administration Regulations or EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve requests for classifications and advisory opinions, export license applications, encryption review requests, reexport license applications, and certain license exception notices subject to the EAR. All terms, conditions, provisions, and instructions, including the applicant and consignee certifications, contained in such form(s) are incorporated as part of the EAR. For the purposes of this part, the term "application" refers to both electronic applications and the Form BIS–748P: Multipurpose Application.

* * * * *

(d) *Electronic Filing Required.* All export and reexport license applications (other than Special Comprehensive License Applications), encryption review requests, license exception AGR notifications, and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP–R), unless BIS authorizes submitting such applications via the paper forms BIS 748–P (Multipurpose Application Form), BIS–748P–A (Item Appendix) and BIS–748P–B, (End-User Appendix). Only original paper forms may be used. Facsimiles or reproductions are not acceptable.

(1) *Reasons for authorizing paper submissions.* BIS will process paper applications notices or requests if the submitting party meets one or more of the following criteria:

(i) BIS has received no more than one submission (*i.e.* the total number of export license applications, reexport license applications, encryption review requests, license exception AGR notifications, *and* classification requests) from that party in the twelve months immediately preceding its receipt of the current submission;

(ii) The party does not have access to the Internet;

(iii) BIS has rejected the party's electronic filing registration or revoked its eligibility to file electronically;

(iv) BIS has requested that the party submit a paper copy for a particular transaction; or

(v) BIS has determined that urgency, a need to implement U.S. government policy or a circumstance outside the submitting party's control justify allowing paper submissions in a particular instance.

(2) *Procedure for requesting authorization to file paper applications, notifications, or requests.* The applicant must state in Block 24 or as an attachment to the paper application (Form BIS 748–P) which of the criteria in paragraph (d)(1) of this section it meets and the facts that support such statement. Submit the completed application, notification or request to Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044 (U.S. Mail deliveries only) or to Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania, NW., Room H2705, Washington, DC 20230.

(3) *BIS decision.* If BIS authorizes or requires paper filing pursuant to this section, it will process the application, notification or request in accordance with Part 750 of the EAR. If BIS rejects a request to file using paper, it will return the Form BIS–748P and all attachments to the submitting party without action and will state the reason for the rejection.

§ 748.2 [Amended]

14. In § 748.2, remove paragraph (c).

15. In § 748.3, revise paragraph (b) introductory text, paragraph (b)(2), and the first sentence of paragraph (c) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

* * * * *

(b) *Classification requests.* Submit classification requests in accordance with the procedures in § 748.1.

* * * * *

(2) When submitting a classification request, you must complete Blocks 1 through 5, 14, 22(a), (b), (c), (d), and (i), 24, and 25 on the application. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification. See Supplement No. 1 to this part for information to be included in blocks other than Block 24.

(c) *Advisory Opinions.* Advisory opinion requests must be in writing and be submitted to the address listed in § 748.1(d)(2). * * *

* * * * *

16. In § 748.4(b)(2)(ii) revise the first sentence to read as follows:

§ 748.4 Basic guidance related to applying for a license.

* * * * *

(b) * * *

(2) * * *

(ii) *Application.* Block 7 of the application (documents on file with applicant) must be marked "other" and Block 24 (Additional information) must be marked "748.4(b)(2)" to indicate that the power of attorney or other written authorization is on file with the agent. * * *

* * * * *

17. In § 748.6, revise paragraph (a), the first sentence of paragraph (b) and paragraph (e) to read as follows:

§ 748.6 General instructions for license applications.

(a) *Instructions.* General instructions for filling out license applications are in Supp. No. 1 to this part. Special instructions for applications involving certain transactions are listed in § 748.8 and described fully in Supp. No. 2 to this part.

(b) *Application Control Number.* Each application has an application control number. * * *

* * * * *

(e) *Attachments to applications.* Documents required to be submitted with applications filed via SNAP–R must be submitted as PDF files using the procedures described in SNAP–R. Documents required to be submitted with paper applications must bear the application control number to which they relate and, if applicable, be stapled to the paper form. Where necessary, BIS may require you to submit additional information beyond that stated in the EAR confirming or amplifying information contained in your license application.

* * * * *

PART 754—[AMENDED]

18. The authority citation for 15 CFR part 754 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

19. In § 754.2, revise paragraphs (g)(1) and (g)(5)(i) to read as follows:

§ 754.2 Crude oil.

* * * * *

(g) *Exports of certain California crude oil.* * * *

(1) Applicants must submit their applications in accordance with §§ 748.1, 748.4 and 748.6 of the EAR.

* * * * *

(5) * * *

(i) BIS will issue licenses for approved applications in the order in which the applications are received, with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

* * * * *

20. In § 754.4, revise paragraphs (d)(1), (d)(2), and the introductory text of paragraph (d)(3) to read as follows:

§ 754.4 Unprocessed Western Red Cedar.

* * * * *

(d) * * *

(1) Applicants requesting to export unprocessed western red cedar must apply for a license in accordance § 748.1, 748.4 and 748.6 of the EAR, submit any other documents as may be required by BIS, and submit a statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979.

Signature

Date

(2) In Blocks 16 and 18 of the application, "Various" may be entered when there is more than one purchaser or ultimate consignee.

(3) For each application submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

* * * * *

21. In § 754.5 revise the second sentence of paragraph (b)(2) to read as follows:

§ 754.5 Horses for export by sea.

* * * * *

(b) * * *

(2) * * * You must provide a statement in the additional information section of the application certifying that no horse under consignment is being exported for the purpose of slaughter.

* * * * *

22. In Supplement No. 2 to Part 754, revise the text to footnote number 2 in the table to read as follows:

Supplement No. 2 to Part 754—Western Red Cedar

* * * * *

[2] Report commodities on license applications in the units of quantity indicated.

PART 764—[AMENDED]

23. The authority citation for 15 CFR part 764 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

24. In § 764.7, revise the second sentence of paragraph (b)(2)(i) to read as follows:

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

* * * * *

(b) * * *

(2) * * *

(i) * * * License applications should be submitted in accordance with §§ 748.1, 748.4 and 748.6 of the EAR, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. * * *

* * * * *

PART 772—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

26. In § 772.1 revise the second sentence of the definition of the term "Other party authorized to receive license."

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

* * * * *

Other party authorized to receive license. * * * If a person and address is listed in Block 15 of the application, the Bureau of Industry and Security will send the license to that person instead of the applicant.

* * * * *

Dated: October 15, 2007.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E7–20655 Filed 10–18–07; 8:45 am]

BILLING CODE 3510–33–P

Notices

Federal Register
Vol. 72, No. 202
Friday, October 19, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0102]

Notice of Decision To Issue Permits for the Importation of Eggplant and Okra From Ghana Into All Areas of the United States and the Importation of Peppers From Ghana Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation of eggplant and okra from Ghana into all areas of the United States and the importation of peppers from Ghana into the continental United States. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of eggplant, okra, and peppers from Ghana.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 18, 2007 (72 FR 39379–39380, Docket No. APHIS-2007-0102), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation of eggplant and okra from Ghana into all areas of the United States and the importation of peppers from Ghana into the continental United States. We solicited comments on the notice for 60 days ending on September 17, 2007. We did not receive any comments.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation of eggplant and okra from Ghana into all areas of the United States and the importation of peppers from Ghana into the continental United States subject to the following phytosanitary measures:

- The eggplant, okra, and peppers must be treated, in Ghana, with irradiation using a minimum absorbed dose of 400 Gy and subject to other requirements of 7CFR part 305.
- Each consignment of eggplant, okra, and peppers must be accompanied by a phytosanitary certificate issued by Ghana's national plant protection organization stating that the consignment received irradiation treatment with 400 Gy as the minimum absorbed dose. In the case of eggplant, the phytosanitary certificate must also include an additional declaration that reads "The fruit in this consignment was inspected and found free of *Eutetranychus orientalis*."
- The eggplant, okra, and peppers may be imported in commercial consignments only.
- The eggplant, okra, and peppers will be subject to standard port-of-entry inspection upon arrival in the United States and must be free of quarantine pests.

These conditions will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*). In addition to those specific measures, the eggplant, okra, and peppers will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Done in Washington, DC, this 15th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–20674 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0102*.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0100]

Notice of Decision To Issue Permits for the Importation of Husked, Silk-Free Baby Corn From Kenya Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of husked, silk-free baby corn from Kenya. Based on the findings

of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of husked, silk-free baby corn from Kenya.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 18, 2007 (72 FR 39380–39381, Docket No. APHIS=2007=0100), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States of husked, silk-free baby corn from Kenya. We solicited comments on the notice for 60 days ending on September 17, 2007. We did not receive any comments.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of husked, silk-free baby corn from Kenya subject to the following phytosanitary measures:

- Each consignment of husked, silk-free baby corn must be accompanied by a phytosanitary certificate issued by Kenya's national plant protection organization to document that the commodity has been inspected and found free of pests.
- The husked, silk-free baby corn may be imported in commercial consignments only.
- The husked, silk-free baby corn will be subject to standard port-of-entry inspection upon arrival in the United States and must be free of quarantine pests.

These conditions will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*). In addition to those specific measures, the husked, silk-free baby corn will subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Done in Washington, DC, this 15th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–20677 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0100.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0099]

Notice of Decision To Issue Permits for the Importation of Peeled Baby Carrots From Kenya Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of peeled baby carrots from Kenya. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of peeled baby carrots from Kenya.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 18, 2007 (72 FR 39381–39382, Docket No. APHIS–2007–0099),

[1] To view the notice, the pest risk analysis, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0099.*

in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States of peeled baby carrots from Kenya. We solicited comments on the notice for 60 days ending on September 17, 2007. We received one comment by that date, from a private citizen. The commenter stated that food should be grown locally and not imported, and that the risks—which she did not specify—associated with imports generally were too great. No changes to the pest risk analysis are necessary based on that comment.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of peeled baby carrots from Kenya subject to the following phytosanitary measures:

- The peeled baby carrots must be inspected by Kenya's national plant protection organization (NPPO) and found free of pests, including *Meloidogyne ethiopica*.
- Kenya's NPPO must issue a phytosanitary certificate for each consignment to assure that the commodity has been inspected and found free of pests. An additional declaration is also required that reads, "Peeled baby carrots in this consignment have been inspected and found free of *Meloidogyne ethiopica*."
- The peeled baby carrots may be imported in commercial consignments only.
- The peeled baby carrots will be subject to standard port-of-entry inspection upon arrival in the United States and must be free of quarantine pests.

These conditions will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*). In addition to those specific measures, the peeled baby carrots will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Done in Washington, DC, this 15th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–20678 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0101]

Notice of Decision To Issue Permits for the Importation of Ribes Species Fruits From South Africa Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of *Ribes* species fruits (i.e., currants and gooseberries) from South Africa. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of *Ribes* species fruits from South Africa.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 18, 2007 (72 FR 39382–39383, Docket No. APHIS–2007–0101), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States of *Ribes* species fruits (i.e., currants and gooseberries) from South Africa. We solicited comments on the notice for 60 days ending on September 17, 2007. We did not receive any comments.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of *Ribes* species fruits from South Africa subject to the following phytosanitary measures:

- Each consignment of *Ribes* species fruits must be accompanied by a phytosanitary certificate issued by South Africa's national plant protection organization to document that the commodity has been inspected and found free of pests.
- The *Ribes* species fruits may be imported in commercial consignments only.
- The *Ribes* species fruits will be subject to standard port-of-entry inspection upon arrival in the United States and must be free of quarantine pests.

These conditions will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*). In addition to those specific measures, the *Ribes* species fruits will subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0101*.

Done in Washington, DC, this 15th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–20675 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability (NOFA) to Invite Applications for the American Indian Credit Outreach Initiative

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is requesting applications for competitive cooperative agreement funds for Fiscal Year (FY) 2008 for the credit outreach initiative targeted to American Indian farmers, ranchers, and youth residing primarily on Indian reservations within the contiguous United States. FSA anticipates the availability of $933,120 in funding. This request for applications is being made prior to passage of a final appropriations bill to allow applicants sufficient time to submit proposals, give the Agency maximum time to process applications, and permit continuity of this program. FSA requests proposals from eligible nonprofit organizations, land-grant institutions, and federally-recognized Indian tribal governments interested in a competitively-awarded cooperative agreement to create and implement a mechanism that will provide credit outreach and promotion, pre-loan education, one-on-one loan application preparation assistance and other related services as proposed by the successful applicant that are specific to FSA's Agricultural Credit Programs.

DATES: Applications must be completed and submitted to the Agency no later than November 19, 2007. Late applications will not be accepted and will be returned to the applicant. Applicants must ensure that the service used to deliver the application can do so by the deadline. Due to recent security concerns, packages sent to the Agency by mail have been delayed several days or even weeks.

ADDRESSES: Submit applications and other required materials by mail to: Mike Hill, Director, Outreach Staff, Farm Service Agency, USDA, STOP 0511, Suite 508 Portals Building, 1400 Independence Avenue, SW.; Washington, DC 20250–0511.

FOR FURTHER INFORMATION CONTACT: Mike Hill, (202) 690–1098; e-mail: *mike.hill@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Solicitation

This solicitation is issued under 7 U.S.C. 2204b(b)(4), which authorizes the Secretary of Agriculture to enter into cooperative agreements to improve the coordination and effectiveness of Federal programs affecting rural areas. The principal objective of this cooperative agreement is to continue a national outreach program that enables American Indian farmers, ranchers, and youth primarily located on Indian reservations in the contiguous United States to understand and have access to the various FSA Agriculture Credit Programs.

Eligibility Information

All proposed approaches must have, within three months upon acceptance of award:

(1) A data tracking system that thoroughly records all credit outreach specific activities and has the ability to provide detailed statistical information on an ad hoc basis, that must also be functional on a real-time basis as well as being available online through the Internet, and

(2) The applicant must demonstrate its ability to learn to deliver these credit outreach services utilizing the FSA online Farm Business Plan software program.

Proposals must demonstrate innovative and unique ways of ensuring that American Indians:

(1) Will be provided a targeted promotional campaign about,

(2) Have ready access to,

(3) Are educated about, and

(4) Can obtain one-on-one assistance specific to the various FSA Agricultural Credit Programs.

Background

Today, American Indians own and control approximately 56 million acres of agricultural lands held in trust by the United States Government and administered, for the most part, by the Bureau of Indian Affairs (BIA) of the Department of the Interior. Land-based agricultural enterprises are considered the primary source of revenue for most tribes, due in large part to their severe isolation from any urban type industrial development activities. Thus, protecting this resource is an important function of the elected tribal officials charged with operating business activities that take place within reservations.

The United States Department of Agriculture (USDA) provides farmers and ranchers technical, financial, and educational resources. American Indian agricultural producers on reservations have long been less able to benefit from USDA services. Since 1987, changes, such as Farm Bills with Indian-specific language, have begun to close some of the gaps created by American Indians' lack of access to USDA's programs and services. As positive as these changes were, they did not fully address an implementation plan or the funds needed to carry out implementation of sorely needed agribusiness education and direct services to American Indian Reservation farmers and ranchers.

American Indian agribusinesses, as well as individual Indians, have consistently reported that the primary need in Indian agriculture was access to the capital required to own and operate their own farms or ranches. Therefore, FSA created and implemented this mechanism to provide credit outreach and other related services related to FSA's Agricultural Credit Programs as a way to resolve some of the credit needs of Indian agriculture.

Definitions

The following definitions are applicable to this Notice.

Agency or FSA. The United States Department of Agriculture Farm Service Agency.

Farm land. Land used for commercial agriculture crops, poultry and livestock enterprises, or aquaculture.

Federally-Recognized Indian Tribal Government. The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Land Grant Institutions.

(1) A 1994 institution (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601)), or an 1890 institution.

(2) An Indian tribal community college or an Alaska Native cooperative college.

(3) A Hispanic-serving institution (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)).

Non-Profit Organization. Any corporation, trust, association, cooperative, or other organization that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Must be an organization that is recognized by the Internal Revenue Service as being certified as 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

Recipient Eligibility Requirements

Applicants must either be a non-profit organization, a federally recognized Indian tribe, or a land grant institution as defined above. Applications without sufficient information to determine their eligibility will not be considered.

Proposal Preparation

A proposal must contain an original and two copies of the following (contact Mike Hill (see **FOR FURTHER INFORMATION CONTACT** above) if you need help getting the forms):

1. Form SF–424, "Application for Federal Assistance."

2. Form SF–424A, "Budget Information—Non-Construction Programs."

3. Form SF–424B, "Assurances—Non-Construction Programs."

4. *Table of Contents*—For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required Federal forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

5. *Proposal Summary*—A summary of the Project Proposal, not to exceed one page, that includes the title of the project, a description of the project (including goals and tasks to be accomplished), the names of the individuals responsible for conducting and completing the tasks, and the expected time frame for completing all tasks (which should not exceed twelve months).

6. *Eligibility*—A detailed discussion, not to exceed two pages, describing how the applicant meets the definition of land grant institution, non-profit organization, or Federally recognized Indian tribal government. In addition, the applicant must describe all other collaborative organizations that may be involved in the project.

7. *Proposal Narrative*—The narrative portion of the project proposal must be in a font such as Times New Roman (12 pt.) or comparable font and must include the following:

(a) *Project Title*—The title of the proposed project must be brief, not to exceed 100 characters, yet represent the major thrust of the project.

(b) *Information Sheet*—A separate one page information sheet that lists each of the seven evaluation criteria listed in this NOFA (see the "Evaluation Criteria and Weights" section below) followed by the page numbers of all relevant material and documentation contained in the proposal that address or support that criteria.

(c) *Goals and Objectives of the Project*—A clear statement of the ultimate goals and objectives of the project must be presented.

(d) *Evaluation Criteria*—Each of the seven evaluation criteria listed in this NOFA (see the "Evaluation Criteria and Weights" section below) must be addressed specifically and individually by category. These criteria should be in narrative form with any specific supporting documentation attached as addenda and should be placed directly following the proposal narrative. If other materials, including financial statements, will be used to support any evaluation criteria it should also be placed directly following the proposal narrative. The applicant must also propose and delineate significant agency participation in the project.

Amount of Award

The amount of funds expected to be available for FY 2008 is approximately $933,120 based on historical fund levels. If actual funding differs from this amount, the Agency will publish a separate Notice of Funds Availability.

Number of Awards

Only one cooperative agreement will be awarded.

Eligible Cooperative Agreement Fund Uses

Cooperative agreement funds may be used to cover allowable costs incurred by the recipient and approved by the Agency. Allowable costs are governed by 7 CFR parts 3015, 3016, and 3019, as applicable, and applicable Office of Management and Budget Circulars.

Ineligible Fund Uses

Cooperative agreement funds must not be used to:

(1) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(2) Purchase, rent, or install fixed equipment, including mobile and other processing equipment;

(3) Pay for the preparation of the grant application;

(4) Pay expenses not directly related to the funded venture (for example, cooperative agreement funds cannot be used to support the organization's general operations);

(5) Fund political or lobbying activities;

(6) Pay costs incurred prior to receiving this Cooperative Agreement;

(7) Fund any activity prohibited by 7 CFR parts 3015, 3016, and 3019, as applicable; and

(8) Fund architectural or engineering design work for a specific physical facility.

Evaluation Criteria, Proposal Review

A National Office panel of USDA employees will review applications for eligibility, completeness, and responsiveness to this NOFA. Incomplete or non-responsive applications will be returned to the applicant and not evaluated further. If the submission deadline has not expired and time permits, ineligible applications may be returned to the applicants for possible revision.

The proposal will be evaluated using the criteria specified below. Failure to address any one of the criteria will disqualify the application. All proposals must be in compliance with this NOFA and applicable statutes.

Prior to technical examination, a preliminary review will be made by FSA Outreach Staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines or are otherwise ineligible will be eliminated from competition. All responsive proposals will be reviewed by a panel of reviewers using the evaluation criteria stated below. The selected USDA employee reviewers will be chosen to provide maximum expertise and objective judgment in the evaluation of proposals. Evaluated proposals will be ranked by the FSA Outreach Staff based on the evaluation criteria and weights listed below. Final approval of those proposals will be made by the Administrator of FSA, subject to the availability of funding.

Evaluation Criteria and Weight

All responsive proposals will be reviewed based on the following seven criteria:

(1) *Applicant's Commitment and Resources (15 points)*—The standard evaluates the degree to which the organization is committed to the project, and the experience, qualifications, competency, and availability of personnel and resources to direct and carry out the project. In addition, the applicant must demonstrate its ability to deliver credit outreach services utilizing the FSA online Farm Business Plan software program immediately upon acceptance of any financial award.

(2) *Feasibility and Policy Consistency (20 points)*—The standard evaluates the degree to which the proposal clearly describes its objectives and evidences a high level of feasibility. This criterion relates to the adequacy and soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation, and dissemination plans.

(3) *Detailed Description of Collaborative Partnerships, if any, and Program Recipients (20 points)*—This standard evaluates the degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of underserved American Indian farmers, ranchers, and youth who would benefit from the services offered will be evaluated.

(4) *Outreach to Socially Disadvantaged American Indian Applicants (10 points)*—This standard evaluates the degree to which the proposal contains detailed programs to reach persons identified as socially disadvantaged American Indian farmers, ranchers, and youth. The proposal will be evaluated for its potential for encouraging and assisting socially disadvantaged American Indian farmers, ranchers, and youth to utilize the various FSA agriculture credit programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

(5) *Innovative Strategies (25 points)*—This standard evaluates the degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements also evaluated include date tracking and innovative solutions. For data tracking, the standard evaluates evidence that the applicant has the ability to put in place a data tracking system that can thoroughly record all credit outreach specific related activities and the ability to provide detailed statistical information on an ad hoc basis, with additional evidence supporting its ability to function on a real-time basis as well its ability to be available online through the Internet. For innovative solutions, the standard evaluates originality, practicality, and creativity in proposing ways to develop and test innovative solutions to existing or anticipated credit issues or problems of socially disadvantaged American Indian farmers, ranchers, and youth. The proposal will be reviewed for its responsiveness to the need to provide socially disadvantaged American Indian farmers, ranchers, and youth with promotion, relevant information, and direct assistance in applying for and receiving FSA agriculture credit, and other essential information to enhance participation in agricultural programs and conduct a successful farming or ranching operation.

(6) *Overall Quality of the Proposal (5 points)*—This standard evaluates the degree to which the proposal complies with this NOFA and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

(7) *Accuracy of Proposed Budget and Justification (5 points)*—This standard evaluates the accuracy of the proposed budget and the accompanying budget justification and should sufficiently provide the reviewer with a detailed description of each budget category that includes categorical subtotals as well as an attached budget justification that clearly defines and explains each and every proposed budget line item.

Selection Process

When the reviewers have completed their individual evaluations, the panel reviewers, based on the individual reviews, will make recommendations to the Administrator that one responsive proposal be approved for support from available funds. Prior to award, the Administrator reserves the right to negotiate with an applicant whose project is recommended for funding regarding project revisions (for example, change in scope of work or the Agency's significant involvement), funding level, or period of support. A proposal may be withdrawn at any time before a final funding decision is made.

Cooperative Agreement Awards

Within the limit of funds available for such purpose, the Administrator will enter into a cooperative agreement with the successful applicant. The date specified by the Administrator as the effective date of the award will not be later than 12 months after the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law.

When To Submit an Application

The deadline for receipt of all applications is November 19, 2007. The Agency will not accept any application received after the deadline.

Cooperator Requirements

Cooperators will be required to do the following:

- Sign required Federal grant-making forms including:
  - Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;
  - Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions;
  - Form AD–1049, Certification Regarding Drug-Free Workplace Requirements (Grants); and
  - Form RD 400–4, Assurance Agreement (Civil Rights).
- Use Standard Form 270, Request for Advance or Reimbursement to request payments.
- Submit a Standard Form 269, Financial Status Report, and list expenditures according to agreed upon budget categories on a semi-annual basis. A semi-annual financial report is due within 45 days after the first 6-month project period and an annual financial report is due within 60 days after the second 6-month project period.
- Submit quarterly performance reports that compare accomplishments to the objectives; if established objectives are not met, discuss problems, delays, or other problems that may affect completion of the project; establish objectives for the next reporting period; and discuss compliance with any special conditions on the use of awarded funds.
- Maintain a financial management system that is acceptable to the Agency.
- Submit a final project performance report.
- Sign an agency approved cooperative agreement (an example of which is provided at the end of this notice).

Other Federal Statutes and Regulations That Apply

In addition to the requirements provided in this notice, other Federal statutes and regulations apply to proposals considered for review and to our cooperative agreement awarded. These include, but are not limited to:

- 7 CFR part 15, subpart A, Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964;
- 7 CFR part 3015, Uniform Federal Assistance Regulations;
- 7 CFR part 3016, Uniform Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments;

- 7 CFR parts 3017 and 3021, Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
- 7 CFR part 3018, New Restrictions on Lobbying;
- 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations; and
- 7 CFR part 3052, Audits of States, Local Governments, and Non-Profit Organizations.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this NOFA because the program does not receive applications from more than 10 persons covered by 5 CFR 1320.3(c).

Signed in Washington, DC, on October 5, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

United States Department of Agriculture
Farm Service Agency
Cooperative Agreement—American Indian Outreach Initiative

This Cooperative Agreement (Agreement) dated____, between_____(Cooperator), and the United States of America, acting through the Farm Service Agency of the Department of Agriculture (the Agency, or Grantor), for $____ in cooperative agreement funds under the program, delineates the agreement of the parties.

Now, therefore, in consideration of the cooperative agreement;

The parties agree that:

(1) All the terms and provisions of the Notice entitled "Notice of Funds Availability (NOFA) Inviting Applications for the American Indian Credit Outreach Initiative," published in the **Federal Register** on October 19, 2007 and the application submitted by the Grantee for this Agreement, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this agreement must be approved in writing by the Agency.

(2) As a condition of the Agreement, the Cooperator certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Cooperator will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

(3) The provisions of 7 CFR part 3015, Uniform Federal Assistance Regulations, and 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable, are incorporated herein and made a part hereof by reference.

Further, the Cooperator agrees that it will:

(1) Not use cooperative agreement funds to plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility); or to purchase, rent, or install fixed equipment.

(2) Use funds only for the purpose and activities specified in the proposal approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance of obligation by the Agency.

(3) Submit a Standard Form 269, Financial Status Report and list expenditures according to agreed upon budget categories on a semi-annual basis. Reports are due by April 30 and October 30 after the grant is awarded.

(4) Provide periodic reports as required by the Agency. A financial status report and a project performance report will be required on a semi-annual basis. The financial status report must show how cooperative agreement funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last semi-annual report. Cooperators must constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports must include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accomplished by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

e. The final report will also address the following:

(i) What have been the most challenging or unexpected aspects of this program?

(ii) What advice you would give to other organizations planning a similar program. These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(iii) If an innovative approach was used successfully, the cooperator should describe their program in detail so that other organizations might consider replication in their areas.

5. Provide Financial Management Systems which will include:

a. Records that identify adequately the source and application of funds for cooperative agreement supported activities. Those records must contain information pertaining to grant and cooperative agreement awards and authorizations, obligations, un-obligated balances, assets, liabilities, outlays, and income.

b. Effective control over and accountability for all funds, property, and other assets. Cooperator must adequately safeguard all such assets and ensure that they are used solely for authorized purposes.

c. Accounting records supported by source documentation.

6. Retain financial records, supporting documents, statistical records, and all other records pertinent to the cooperative agreement for a period of at least 3 years after closing, except that the records must be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the Cooperator that are pertinent to the specific cooperative agreement program for the purpose of making audits, examinations, excerpts, and transcripts.

7. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Agency funds without the written consent of the Agency.

8. Not duplicate other program purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

The Agency agrees to make funds available to the Cooperator under this Agreement in an amount not to exceed the amount indicated above. The funds will be reimbursed or advanced based on submission to the Agency by the

Cooperator of a complete Standard Form 270.

Authorized and executed this day by:

(Cooperator)

(Title)

UNITED STATES OF AMERICA
FARM SERVICE AGENCY

By:

(Name)

(Title)

[FR Doc. E7–20624 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; East Maurys Fuels and Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On August 15, 2005, the USDA Forest Service (FS), Ochoco National Forest, published a Notice of Intent (NOI) in the **Federal Register** (70 FR 47785–47787) to prepare an environmental impact statement (EIS) for the East Maurys Fuels and Vegetation Management Project. The FS revises that NOI as follows: Except for the sections noted, all prior information remains the same.

DATES: The original NOI states the draft EIS is expected to be available for public comment in May 2006 and final EIS is expected in November 2006. This revised NOI modifies the date the draft EIS is expected to be available to December 2007. The Environmental Protection Agency (EPA) will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register** when it is available. The final EIS is estimated to be available to the public in April 2008.

FOR FURTHER INFORMATION CONTACT: Barb Fontaine, Project Leader, at the Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754 or at (541) 416–6500.

SUPPLEMENTARY INFORMATION:

Possible Alternatives

The original NOI stated that an alternative limited to noncommercial thinning and prescribed fire activities was being considered. That alternative is no longer being considered. Based on issues identified as a result of scoping efforts, an alternative that limits new road construction is being developed.

Responsible Official

The responsible official for this project is Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754.

Preliminary Issues

As a result of scoping efforts, the Ochoco National Forest has identified two significant issues that will be analyzed in detail. These issues relate to road construction and the effects of roads on water quality and wildlife habitats.

Dated: October 10, 2007.

Arthur J. Currier,

District Ranger.

[FR Doc. 07–5169 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC50

Proposed Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for public comment.

SUMMARY: The Forest Service is proposing changes to directives governing special use permits for outfitting and guiding conducted on National Forest System lands by simplifying the application and administration process; establishing a flat land use fee for temporary use permits; developing a process for allocation of use on a first-come, first-served basis for temporary use permits to facilitate greater participation in outfitting and guiding by youth, educational, and religious groups; offering the same terms and conditions to educational and institutional permit holders as to other types of permit holders; and clarifying policy for priority use permits governing performance, inspections, and allocation of use. In addition, the Forest Service is proposing changes to a directive governing insurance requirements for Forest Service special use permits. Public comment is invited and will be considered in development of the final directives.

DATES: Comments must be received in writing by January 17, 2008.

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulation.gov*. Comments also may be submitted by mail to U.S. Forest Service, Attn: Carolyn Holbrook, Recreation and Heritage Resources Staff (2720), 1400 Independence Avenue, SW., Stop 1125, Washington, DC 20250–1125. If comments are sent electronically, the public is requested not to send duplicate comments by mail. Please confine comments to issues pertinent to the proposed directives, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on these proposed directives in the Office of the Director, Recreation and Heritage Resources Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1426 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, (202) 205–1426, Recreation and Heritage Resources Staff.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Proposed Directives

Outfitting and guiding conducted on National Forest System lands have become one of the chief means for the recreating public to experience the outdoors. The Forest Service administers approximately 5,000 outfitting and guiding permits, authorizing activities ranging from guided hunting and fishing trips to jeep tours and outdoor leadership programs. The agency anticipates that outfitting and guiding will increase in importance as the public's desire for use of Federal lands increases and as the agency encourages use by increasingly diverse and urban populations, many of whom may lack the equipment and skills necessary in the outdoors. Therefore, agency policy needs to reflect the public's demand for services while incorporating standard business practices and sustaining the natural environment in which these activities occur.

Except for the revision to term length for priority use permits (70 FR 19727),

outfitting and guiding directives have remained relatively unchanged since they were finalized in 1995. Since that time, proposed legislation and field implementation of current policy have shown the need for updating the directives. Any proposed changes that are adopted would be incorporated as appropriate in the standard special use permit for outfitting and guiding, form FS–2700–4i, or other applicable forms.

In addition, the Forest Service is proposing to update direction on the minimum amounts of insurance coverage required for special use permits, including outfitting and guiding permits. While this direction applies to special uses generally, it is particularly important for outfitting and guiding, which can entail significant risk and severity of injury.

2. Section-by-Section Analysis of Proposed Changes to Outfitting and Guiding Directives

In General

Chapter 40, section 41.53, of Forest Service Handbook (FSH) 2709.11 would be reformatted and renumbered in its entirety. The number of sections would be expanded from 12 to 15 (41.53a through 41.53o).

Policy

Proposed section 41.53c, paragraph 5, would be revised to provide that outfitting and guiding authorized under a term permit be addressed in a supplement to the term permit rather than in the operating plan. A Forest Service form would be created for this purpose that would incorporate clauses from the standard outfitting and guiding permit, form FS–2700–4i. Additionally, paragraph 6 would be added to clarify who can hold an outfitting and guiding permit.

New Definitions

In proposed section 41.53d, definitions for the following terms would be added in alphabetical order to the list of definitions currently in section 41.53c:

Allocation of Use. An amount of use allocated to a holder that is measured in service days or quotas and that is enumerated in a programmatic or project decision that is consistent with the applicable land management plan. This definition, excerpted from ID 2709.11–2005–1, would be added to clarify how use will be measured.

Assigned Site. A site, such as a base or drop camp, picnic area, boat launch, or helispot, that is authorized for use and occupancy by a holder and for which a fee is paid by that holder. This definition, from FSH 2709.11, section 37.05, with minor revisions, would be added to facilitate permit administration.

Commercial Use or Activity. Any use or activity on National Forest System lands (a) where an entry or participation fee is charged or (b) where the primary purpose is the sale of a good or service and, in either case, regardless of whether the use or activity is intended to produce a profit (36 CFR 251.51). This definition, excerpted from 36 CFR 251.51, would be added to clarify that the for-profit or not-for-profit status of entities does not determine whether they are conducting a commercial use.

Controlling Interest. In the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business. This definition, excerpted from 36 CFR 251.120, would be added for consistency with that rule and to clarify what constitutes a controlling interest for different types of business entities.

Livestock Use. Use of pack and saddle stock authorized in connection with an outfitting and guiding permit, expressed in animal months and by type of animal. A cross-reference for this definition in FSM 2234.11 would be added to be consistent with terminology in Forest Service grazing policy.

Needs Assessment. An assessment of public or agency need for authorized outfitting or guiding activities. This definition would be added to clarify an important step in deciding what types of public services are needed on National Forest System lands.

Quota. An allotment of use measured as the number of stock per trip, people at one time, trips per hour or per day, the number of launches per day, or other unit of measure other than a service day that is consistent with the applicable land management plan guidance and established in a programmatic or project decision. This definition, adopted from ID 2709.11–2005–1, would be added to clarify that use may be allocated in a unit of measure other than a service day when consistent with the applicable land management plan guidance or approved in a programmatic or project decision. In contrast to service days, which allocate use annually, quotas set limits on the number of people or livestock that may be present at one time.

Resource Capacity. Amount of overall use an area can sustain without detrimental social or physical resource impacts. This definition would be added to clarify an important step in deciding where and how much use is appropriate in an area under analysis.

Service Day. An allocation of use derived from a day or any part of a day on National Forest System lands for which an outfitter or guide provides services to a client, multiplied by the number of clients on the trip. This definition, found in chapter 30 of FSH 2709.11 on fee determination and ID 2709.11–2007–1, would be added to chapter 40 to facilitate permit administration. In addition, this definition would be revised to conform to the agency's concept of a service day for purposes of allocation of outfitting and guiding use, which is based on the number of days or parts of days services are provided on National Forest System lands, as well as the number of clients on a trip.

Revised Definitions

The following definitions would be revised to read as follows:

Guiding. Providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on National Forest System lands. The term "guide" includes the holder's employees and agents. This definition would be modified to make it consistent with revisions made to the definition during rulemaking (69 FR 41946, July 13, 2004).

Holder. An individual or entity that holds a special use permit authorizing outfitting or guiding activities on National Forest System lands. This definition would be revised to apply to entities that have received a permit rather than to applicants.

Outfitting. Renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment. The term "outfitter" includes the holder's employees and agents. This definition would be revised to make it consistent with revisions made to the definition during

rulemaking (69 FR 41946, July 13, 2004).

Priority Use. Authorization of use for up to 10 years, based on the holder's past use and performance and applicable programmatic or project decision to allocate use. Except as provided in 36 CFR part 251, subpart E, authorizations providing for priority use are subject to renewal (FSH 2709.11, sec. 41.53k). This definition would be revised for better syntax.

Renewal. The issuance of a new priority use permit for the same use to the same holder upon expiration of the holder's current priority use permit. This definition would be revised to clarify that renewal applies only to priority use permits and not to temporary use permits.

Temporary Use. Authorization of a minor, non-recurring outfitting or guiding activity for one season or less. This definition would be revised for consistency with the concept of temporary use in proposed section 41.53j.

Removed Definition

The definition for incidental use would be removed and replaced with the proposed definition of temporary use.

Land Use Management

Proposed section 41.53e would be new direction that would address needs assessments, resource capacity analysis, and allocation of use for outfitting and guiding consistent with agency policy for land use management generally and land management planning. These subjects are not addressed in the current directive.

Applicable Authority

Proposed section 41.53g, paragraph 1, would cite the Federal Lands Recreation Enhancement Act (REA), rather than Section 4 of the Land and Water Conservation Fund Act (LWCFA), as the authority for outfitting and guiding permits. REA supplanted the authority in the LWCFA for issuing special recreation use permits. Proposed section 41.53g, paragraph 1, also would cite the Term Permit Act of 1915 to acknowledge that in some circumstances outfitting and guiding may be authorized under that authority.

Operations

With the increase in demand for limited outfitting and guiding opportunities, entrepreneurs are sometimes proposing unacceptable business practices. For example, some permit holders are proposing to serve as brokers for outfitters and guides, whereby the holders would contract with outfitters and guides for all aspects of the authorized services. This practice does not meet the intent of the special uses regulations at 36 CFR part 251, subpart B, which require the holder to be technically qualified to provide authorized services and contemplate that the holder control day-to-day operations, maintain all required insurance coverage, and serve as the principal owner of the business assets. Current policy does not address these requirements effectively. Accordingly, proposed section 41.53i, paragraph 5, would require the holder or the holder's employees to conduct the day-to-day activities authorized by the permit, subject to specific exceptions enumerated in paragraphs 5a through 5c. These exceptions would allow the holder to contract for services and equipment, subject to certain conditions.

To ensure that services and equipment contracted by the holder are covered by the holder's insurance policy, proposed section 41.53i, paragraph 5, also would require the holder's insurance policy to include an endorsement covering contracted equipment and services. The endorsement would be included in insurance directives at FSM 2713.1, paragraph f, exhibit 01. Proposed section 41.53i, paragraph 5, would give holders the flexibility to contract for needed services and equipment, while protecting the public, holders, and the United States.

Specifically, proposed section 41.53i, paragraph 5a, would allow certain specified ancillary services to be provided by a party other than the holder or the holder's employees, (other than unanticipated, intermittent ancillary services authorized by proposed section 41.53i, paragraph 5c), but only with prior written approval from the authorized officer, provided that certain conditions are met. These specified ancillary services would include provision of special equipment or livestock; food and shuttle services; and for a limited number of trips, a specialized guide for people with disabilities or for highly technical trips.

Proposed section 41.53i, paragraph 5b, would allow a holder authorized to provide solely outfitting services to contract with a guide, but only with the prior written approval of the authorized officer, based upon a finding that the following conditions are met:

(1) The services of the contracted guide are covered under the contracting holder's operating plan.

(2) The contracted guide has all required state licenses.

(3) The contract for guiding services states that the contracting holder remains responsible for compliance with the terms of the permit in connection with provision of guiding services.

(4) The contracting holder will exercise management authority over all the day-to-day field operations of the business, including guiding services covered by the contract.

When on a particular day a holder lacks sufficient equipment or guides to accommodate the holder's customers, proposed section 41.53i, paragraph 5c, would allow the holder, without prior written approval from the authorized officer, to contract for additional equipment or guides from another Forest Service outfitting and guiding permit holder. The contracted equipment and services would be covered under the permit and operating plan of the contracting holder.

Special Uses Streamlining

Section 41.53j, paragraph 12, of this proposed directive would decrease administrative costs of temporary use permits for both the Forest Service and permit holders by eliminating the need for annual performance evaluations for these permits. This approach is consistent with the rationale for the Department's special uses streamlining regulations, promulgated at 36 CFR part 251, subpart B (63 FR 65949, November 30, 1998), to maximize efficiencies in the special uses program.

Under proposed section 41.53j, temporary use permits would be issued for minor, non-recurring outfitting and guiding activities for one season or less and would not be subject to renewal, consistent with current policy. Examples of temporary use include a day trip conducted by an educational institution.

As competition for limited outfitting and guiding opportunities has increased, the agency has become aware of the need to enhance availability of temporary use. To address this need, proposed section 41.53j, paragraphs 5, 6, and 7, would provide for allocation of temporary use service days or quotas from a common pool on a first-come, first-served basis throughout the calendar year. Upon termination of a temporary use permit, all service days or quotas allocated to the holder of that permit would be returned to the common pool for redistribution during the next calendar year. Additionally, priority use service days or quotas that have not been used within the first five years of a priority use permit or upon renewal of a priority use permit may be reallocated to the common pool for

temporary use permits. This revision would increase the availability of use days for non-recurring outfitting and guiding.

Supporting Small Businesses

Proposed section 41.53k, paragraphs 2 and 3, would streamline administration of priority use by establishing a probationary 2-year permit term that could be extended based upon satisfactory performance. This proposed revision would replace the current, more cumbersome system of conversion from temporary to priority use. This proposed revision also would benefit applicants by allowing longer-term business planning than temporary permits that do not exceed one year and that have no assurance of renewal the following year.

Under current policy, allocation of use for a priority use permit holder can be reduced if the holder uses less than 70 percent of the assigned use in each of three consecutive years. Adverse impacts on tourism from the events of September 11, 2001, and increasing numbers of large fires on National Forest System lands have demonstrated the need for modification of policy on adjusting allocation of use for priority use permit holders who do not use all their allotted service days. Current policy may penalize holders for actions outside their control and does not allow them to regain their original allocation.

Proposed section 41.53l would provide for review of actual use after five years and adjustment of the allocation of use to match the highest amount of actual use in one calendar year during that period. In addition, ten percent of this amount would be added to the allocation to account for market fluctuations, availability of state hunting licenses, and natural phenomena (such as forest fires or floods) that may have adversely affected the holder's ability to utilize the authorized use fully, provided that the combination of the highest amount of actual use in one calendar year and the additional ten percent of use could not exceed the original amount of allocated use. This proposed change would more accurately reflect the time necessary to adjust to evolving market trends, would give the holder a buffer to manage cancellation of reservations, and would bring predictability to elements affecting business planning decisions. Additionally, this adjustment would release unused priority use days to other holders.

10-Year Term for Educational and Institutional Groups

By removing section 41.53l on institutional and semi-public outfitting and guiding in the current directive, this proposed directive would apply the Forest Service's policy on priority use permits, including the maximum permit term of ten years, to institutional and semi-public groups, such as youth, educational, and religious groups. Currently, institutional and semi-public groups may hold only a temporary use permit of one year or less. Many of the largest holders in terms of client use and revenue are institutional groups. This change would facilitate greater business continuity and provide consistency and equity with other types of outfitting and guiding.

Consistent with removing direction in current section 41.53l on institutional and semi-public outfitting and guiding and proposed changes to streamline administration of temporary use, the Forest Service is proposing to change the title of FSH 2709.11, section 37.21b, from "Fee for Temporary Use Permits for Incidental Use," to "Flat Fee for Temporary Use Permits," and revise the text to establish a flat fee for temporary use permits when adjusted gross revenue for use authorized by those permits is less than $10,000 for 50 or fewer service days or less than $20,000 for 51 to 100 service days.

Permit Administration

Proposed section 41.53n would address the grounds for revocation and suspension of an outfitting and guiding permit. This proposed section also would address applicable procedures for revocation and suspension, including immediate suspension, in accordance with applicable regulations.

Paragraphs 3 and 4 of proposed section 41.53o, governing administration of priority use permits, would clarify requirements for performance standards developed by the Forest Service and would require development of a scoring system or other means for correlating the standards to performance ratings.

Paragraph 5 of proposed section 41.53o would clarify the consequences (*e.g.*, letter of probation, suspension, or revocation) of adverse performance ratings.

Paragraph 6 of proposed section 41.53o would clarify notice requirements for suspension or revocation of a priority use permit, the requirement for a reasonable opportunity to take corrective action prescribed by the authorized officer, and the availability of appeal of adverse annual performance ratings and a decision to take adverse action based on those ratings.

Paragraphs 7 and 8 would clarify that the findings from inspections which are used as a basis for performance ratings are not subject to administrative appeal.

3. Analysis of Proposed Changes to the Insurance Directive

The Forest Service has determined that direction on insurance required for special use permits is obsolete. Specifically, minimum amounts of liability insurance coverage for special use permits enumerated in Forest Service Manual (FSM) 2713.1 are too low. In addition, current FSM 2713.1 does not provide guidance on distinguishing among different levels of risk in determining the minimum amount of liability insurance coverage.

Proposed FSM 2713.1 would establish minimum amounts of liability insurance coverage that are consistent with industry practice and potential liability. Specifically, proposed FSM 2713.1 would increase the current minimum insurance amount of $100,000 for injury or death to one person to a range of $300,000 to $1,000,000, and would increase the current minimum insurance amount of $200,000 for injury or death to more than one person to a range of $500,000 to $2,000,000. Proposed FSM 2713.1 also would provide guidance on distinguishing among different levels of risk, both in terms of the severity and likelihood of injury, in selecting the minimum amount of insurance coverage within each range. Additionally, the reference to and exhibit for the sample certificate of insurance would be replaced with a reference to certificates of insurance on industry standard form ACCORD 25–S.

The agency is proposing to reformat FSM 2713.1 and to make minor technical changes to the section. These changes include a new paragraph referencing separate, regionally established minimum amounts of liability insurance coverage for commercial users of National Forest System roads that are subject to an investment sharing agreement or reciprocal easement.

4. Regulatory Requirements

Environmental Impact

These proposed directives would revise national policy governing administration of special use permits for outfitting and guiding. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or

environmental impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." The agency has concluded that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

These proposed directives have been reviewed under USDA procedures and Executive Order (E.O.) 12866 as revised by E.O. 13422, on regulatory planning and review. The Office of Management and Budget has determined that these are not significant directives. These proposed directives would not have an annual effect of $100 million or more on the economy, nor would they adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. These proposed directives would not interfere with an action taken or planned by another agency, nor would they raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, these proposed directives are not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, these proposed directives have been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that these proposed directives would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed directives would not impose record-keeping requirements on them; the proposed directives would not affect their competitive position in relation to large entities; and the proposed directives would not significantly affect their cash flow, liquidity, or ability to remain in the market.

To the contrary, the efficiencies and consistency to be achieved by the proposed outfitting and guiding directive should benefit small businesses that seek to use and occupy National Forest System lands by providing the potential for greater business continuity for outfitters and guides and by reducing the frequency of time-consuming and sometimes costly processing of special use applications. The benefits cannot be quantified and are not likely to substantially alter costs to small businesses. Increasing the minimum amounts of liability insurance coverage would not adversely affect small businesses because most outfitters and guides voluntarily carry, and most Forest Service regions already require, minimum coverage consistent with the proposed minimums, in accordance with industry practice.

No Takings Implications

These proposed directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed directives would not pose the risk of a taking of private property.

Civil Justice Reform

These proposed directives have been reviewed under Executive Order 12988 on civil justice reform. If the proposed directives were adopted, (1) All State and local laws and regulations that are in conflict with the proposed directives or that would impede their full implementation would be preempted; (2) no retroactive effect would be given to the proposed directives; and (3) they would not require administrative proceedings before parties may file suit in court challenging their provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered these proposed directives under the requirements of Executive Order 13132 on federalism and has concluded that the proposed directives conform with the federalism principles set out in this executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these proposed directives do not have tribal implications as defined by Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

These proposed directives have been reviewed under Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." The Agency has determined that these proposed directives do not constitute a significant energy action as defined in the Executive Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these proposed directives on State, local, and Tribal governments and the private sector. These proposed directives would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collected from the public that would be required by these proposed directives has been approved by the Office of Management and Budget and assigned control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

5. Access to Proposed Directives

The Forest Service organizes its directive system by alphanumeric codes and subject headings. The intended audience for this direction is Forest Service employees charged with issuing and administrating outfitting and guiding special use permits. To view the proposed directive text, visit the Forest Service's Web site at *http://www.fs.fed.us/recreation/permits/*. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice have been posted, including: Forest Service Handbook 2709.11—Special Uses Handbook Chapter 40, Special Uses Administration, Sections 41.53a through 41.53o, Outfitting and Guiding, and Chapter 30, Fee Determination, Section 37.21b, Flat Fee for Temporary Use Permits; and Forest Service Manual Chapter 2710, Special Use Authorizations, Section 2713.1, Liability and Insurance.

Dated: September 20, 2007.

Abigail R. Kimbell,

Chief, Forest Service.

[FR Doc. E7–20659 Filed 10–18–07; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and services previously furnished by such agencies.

Comments Must be Received On or Before: November 18, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Defense Logistics Agency, Defense Supply Center-Richmond, VA.

Service Type/Location: Catering Services, San Antonio Detention Center, 8940 Fourwinds Drive, 1st Floor Detention Branch, San Antonio, TX.
NPA: Goodwill Industries of San Antonio, San Antonio, TX.
Contracting Activity: Immigration and Customs Enforcement, Washington, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for deletion from the Procurement List:

Product

Paper, Xerographic & Inkjet (Large Format)
NSN: 7530–00–NIB–0483
NSN: 7530–00–NIB–0598
NSN: 7530–00–NIB–0599
NSN: 7530–00–NIB–0600
NSN: 7530–00–NIB–0601
NSN: 7530–00–NIB–0602
NSN: 7530–00–NIB–0603
NSN: 7530–00–NIB–0604
NSN: 7530–00–NIB–0605
NSN: 7530–00–NIB–0606
NSN: 7530–00–NIB–0607
NSN: 7530–00–NIB–0608
NSN: 7530–00–NIB–0609
NSN: 7530–00–NIB–0610
NSN: 7530–00–NIB–0611
NSN: 7530–00–NIB–0612
NSN: 7530–00–NIB–0613
NSN: 7530–00–NIB–0614
NSN: 7530–00–NIB–0615
NSN: 7530–00–NIB–0616
NSN: 7530–00–NIB–0617
NSN: 7530–00–NIB–0618
NSN: 7530–00–NIB–0619
NSN: 7530–00–NIB–0620
NSN: 7530–00–NIB–0621
NSN: 7530–00–NIB–0622
NSN: 7530–00–NIB–0623
NSN: 7530–00–NIB–0624
NSN: 7530–00–NIB–0625
NSN: 7530–00–NIB–0626
NSN: 7530–00–NIB–0627
NSN: 7530–00–NIB–0628
NSN: 7530–00–NIB–0629
NSN: 7530–00–NIB–0630
NSN: 7530–00–NIB–0631
NSN: 7530–00–NIB–0632
NSN: 7530–00–NIB–0633
NSN: 7530–00–NIB–0634
NSN: 7530–00–NIB–0635
NSN: 7530–00–NIB–0636
NSN: 7530–00–NIB–0637
NSN: 7530–00–NIB–0638
NSN: 7530–00–NIB–0639
NSN: 7530–00–NIB–0640
NSN: 7530–00–NIB–0641
NSN: 7530–00–NIB–0642
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

Services

Service Type/Location: Food Service Attendant, Air National Guard Base, Building 600, Lincoln, NE.
NPA: Goodwill Services, Inc., Lincoln, NE.
Contracting Activity: Air National Guard, Lincoln, NE.
Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture, Forest Service Office,

Beaverhead-Deerlodge National Forest, Butte, MT.
NPA: BSW, Inc., Butte, MT.
Contracting Activity: U.S. Department of Agriculture, Forest Service, Butte, MT.
Service Type/Location: Janitorial/Custodial, U.S. Customs Service, 8855 NE Airport Way, Portland, OR.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: U.S. Customs Service, Indianapolis, IN.
Service Type/Location: Janitorial/Custodial, Naval and Marine Corps Reserve Center, Eugene, OR.
NPA: Unknown.
Contracting Activity: Naval Facilities Engineering Command—Everett, Everett, WA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–20637 Filed 10–18–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a product and service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product and service previously furnished by such agencies.

DATES: *Effective Date:* November 18, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On August 17 and August 24, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 46207; 48610) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.
2. The action will result in authorizing small entities to furnish the product and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

Long Format Binder for FCCL

NSN: 7510–00–NSH–0118—Blue.
NSN: 7510–00–NSH–0119—Red.
Coverage: B-List for the broad Government requirements as specified by the General Services Administration.
NPA: Pueblo Diversified Industries, Inc., Pueblo, CO.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

Service

Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture—Agriculture Research Service, Southeastern Fruit & Tree Nut Research Laboratory (SEFTNRL), 21 Dunbar Road, Byron, GA.
NPA: NAMI-Central Georgia, Inc., Warner Robins, GA.
Contracting Activity: U.S. Department of Agriculture, Agriculture Research Service-SAA, Athens, GA.

Deletions

On August 24, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 48611) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

SKILCRAFT SAVVY BK–14 H/D Degreasing Detergent

NSN: 7930–00–NIB–0144—SKILCRAFT SAVVY BK–14 H/D Degreasing Detergent—32 oz.
NSN: 7930–00–NIB–0145—SKILCRAFT SAVVY BK–14 H/D Degreasing Detergent—1 Gallon.
NSN: 7930–00–NIB–0146—SKILCRAFT SAVVY BK–14 H/D Degreasing Detergent—5 Gallon.
NSN: 7930–00–NIB–0147—SKILCRAFT SAVVY BK–14 H/D Degreasing Detergent—55 Gallon.

SKILCRAFT SAVVY BK–1260 G/P Disinfectant Detergent

NSN: 7930–00–NIB–0176—SKILCRAFT SAVVY BK–1260 G/P Disinfectant Detergent—32 oz.
NSN: 7930–00–NIB–0177—SKILCRAFT SAVVY BK–1260 G/P Disinfectant Detergent—1 gallon.
NSN: 7930–00–NIB–0178—SKILCRAFT SAVVY BK–1260 G/P Disinfectant Detergent—5 gallon.
NSN: 7930–00–NIB–0179—SKILCRAFT SAVVY BK–1260 G/P Disinfectant Detergent—55 gallon.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Impressions Custom Printed Products Service, for General Services Administration, 26 Federal Plaza, New York, NY.

NPA: The Lighthouse for the Blind, Inc. Seattle, WA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Kimberly M. Zeich,
Director, Program Operations.
[FR Doc. E7–20638 Filed 10–18–07; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 070607177–7586–02]

Solicitation of Applications for the National Technical Assistance, Training, Research and Evaluation Program: Information Dissemination Project and Business Incubator Research Project

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) publishes this notice to solicit applications for funding under its National Technical Assistance, Training, Research and Evaluation Program (NTA Program). On June 21, 2007, EDA published in the **Federal Register** a notice regarding NTA Program funding, to solicit applications for funding that address one or both of the following two projects: (1) Information dissemination to practitioners serving economically distressed areas; and (2) a national symposium to bring together leaders to discuss current and future trends in economic development. On July 6, 2007, EDA published another notice in the **Federal Register** to solicit applications for funding that address one or more of four research projects, including one relating to business incubators. After completing its review of applications submitted in response to the June 21, 2007 and July 6, 2007 **Federal Register** notices, EDA decided not to make an award for either the information dissemination project or the business incubator research project. Through this notice, EDA solicits applications for funding that address only the information dissemination project or the business incubator research project. EDA encourages applicants to read the descriptions of both projects as EDA has provided additional information on important requirements that were not in the original Federal Funding Opportunity (FFO) announcements and **Federal Register** notices.

DATES: The closing date and time for receipt of electronic or paper applications for funding under this notice and request for applications is Friday, November 9, 2007 at 5 p.m. EST. To be considered timely, a completed application, regardless of the format in which it is submitted, must be either: (1) Received by the EDA representative listed below under "Paper Submissions" no later than November 9, 2007 at 5 p.m. EST; or (2) transmitted and time-stamped at *www.grants.gov* no later than November 9, 2007 at 5 p.m. EST. Any application received or transmitted, as the case may be, after 5 p.m. EST on November 9, 2007 will be considered non-responsive and will not be considered for funding. By December 7, 2007, EDA expects to notify the applicants selected for investment assistance under this notice. The selected applicant should expect to receive funding for its project within thirty days of EDA's notification of selection. Applicants choosing to submit completed applications electronically in whole or in part through *www.grants.gov* should follow the instructions set out below under "Electronic Access" and in section IV. of the complete FFO announcement for this request for applications.

ADDRESSES: *Paper Submissions:* Full or partial paper (hardcopy) applications submitted pursuant to this notice and request for applications may be:

1. E-mailed to William P. Kittredge, Senior Program Analyst, at *wkittredge@eda.doc.gov*; or

2. Hand-delivered or mailed to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants submitting full or partial paper submissions are encouraged to do so by e-mail. Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery.

Electronic Submissions: Applicants may submit applications electronically in whole or in part in accordance with the instructions provided at *www.grants.gov* and in section IV.B. of the FFO announcement. EDA strongly encourages that applicants not wait until the application closing date to begin the application process through *www.grants.gov*. The preferred file format for electronic attachments (e.g., the project narrative and additional exhibits to Form ED–900A and Form ED–900A's program-specific component) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, Lotus or Excel formats.

FOR FURTHER INFORMATION CONTACT: For additional information regarding paper submissions, please contact William P. Kittredge, Senior Program Analyst, via e-mail at *wkittredge@eda.doc.gov* (preferred) or by telephone at (202) 482–5442. For additional information regarding electronic submissions, please access the following link for assistance in navigating *www.grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under Frequently Asked Questions, try consulting the *Applicant's User Guide*. If you still cannot find an answer to your question, contact *www.grants.gov* via email at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for *www.grants.gov* are Monday-Friday, 7 a.m. to 9 p.m. (EST) (except for federal holidays). Additional information about EDA and its NTA Program may be obtained from EDA's Internet Web site at *http://www.eda.gov*.

SUPPLEMENTARY INFORMATION:

Background Information: On June 21, 2007 and July 6, 2007, EDA published two separate **Federal Register** notices soliciting applications for funding under its NTA Program. The June 21, 2007, **Federal Register** notice (72 FR 34225) solicited applications for funding that addressed one or both of the following two projects: (1) Information dissemination to practitioners serving economically distressed areas; and (2) a national symposium to bring together leaders to discuss current and future trends in economic development. The deadline for receipt of applications closed July 23, 2007 at 5 p.m. EST. After completing its review of applications submitted in response to the June 21, 2007 **Federal Register** notice, EDA decided not to make an award for the information dissemination project. Through this notice, EDA solicits applications for the information dissemination project in accordance with the project description and deliverables set out in section I.B. of the FFO announcement. This notice does not address and does not solicit applications for the national symposium project.

The July 6, 2007, **Federal Register** notice (72 FR 36952) solicited applications for funding that addressed one or more of the following four research projects: (1) Rural economic

development policy; (2) business incubators; (3) 21st century regionalism; and (4) private sector community investment. The deadline for receipt of applications closed on August 3, 2007 at 5 p.m. EST. After completing its review of applications submitted in response to the July 6, 2007 **Federal Register** notice, EDA decided not to make an award for the business incubator research project. Through this notice, EDA solicits applications for the business incubator research project in accordance with the project description set out in section I.B. of the FFO announcement. Because EDA has made awards for research projects for (1) Rural economic development policy, (2) 21st century regionalism, and (3) private sector community investments, this notice does not address or solicit applications for those projects.

Project Title: Information Dissemination to Practitioners Serving Economically Distressed Areas

As part of its ongoing mission to assist economically distressed areas, EDA supports the dissemination of information to economic development practitioners serving distressed communities. EDA's intent is to implement a coordinated and complementary information dissemination program that, through strategic linkages, reaches the maximum number of economic development practitioners. The dissemination effort includes the development of distribution lists for each deliverable, which will be made available to EDA for its use.

EDA is soliciting applications to fund three separate tasks that will serve the economic development needs of distressed rural and urban regions, take greater advantage of new technologies for information dissemination, and identify and widely disseminate information in new or emerging areas of economic development. As described in detail in the accompanying FFO announcement that can be accessed at *www.grants.gov* and at *www.eda.gov*, the information dissemination project will include a variety of media and has three component tasks: (i) Producing and broadcasting strategy telecasts; (ii) preparing and disseminating monthly electronic newsletters; and (iii) preparing and disseminating a quarterly magazine/pamphlet. The applicant must address all three tasks in its application.

Project Title: Business Incubators

Recent studies on economic development, including several EDA-funded reports, stress the importance of a regional approach to successful economic development efforts and the importance of fostering innovation and supporting entrepreneurship as key elements in regional economic development.

Pursuant to its NTA Program, EDA is soliciting applications to undertake research involving business incubators. Business incubators may provide wet lab or office space, and often also offer business support services, such as business planning and marketing assistance. Business incubators of whatever type share a common principle: To nurture the development of entrepreneurial companies. EDA solicits applications from qualified researchers to build on the existing body of knowledge about business incubators, distilling the characteristics of successful incubation efforts and discussing quantitative and qualitative approaches to measuring incubator success. The research must be peer-review quality, include coverage of recent developments, such as virtual incubators, and must be of sufficient scope that the results, including but not limited to identification of best practices, are generalizable across the United States.

To be considered for funding, all applications for the projects solicited through this notice must comply with the new program requirements set out in the FFO announcement. Any applicant that submitted an application during the previous solicitation period should submit a new and complete application, if it wishes to be considered for funding. All materials must be received by EDA by November 9, 2007 at 5 p.m. EST.

Application Package: An application package for either proposed project consists of the following three forms:

1. Form ED–900A, *Application for Investment Assistance* (OMB Control No. 0610–0094);

2. Form ED–900A's program-specific component, *National Technical Assistance, Training, and Research and Evaluation Program Requirements* (OMB Control No. 0610–0094); and

3. Form SF–424, *Application for Federal Assistance* (OMB Control No. 4040–0004).

Please note that applicants must submit all three forms in accordance with the instructions provided in sections IV. and VII.B. of the FFO announcement. Applicants also must ensure that they access and complete the current version of all required forms.

As stated in section I.A. of the FFO announcement, applicants that applied during the prior solicitation period and are interested in applying under this competitive solicitation should submit new and complete applications that fully adhere to the project descriptions and deliverables set out under section I.B. of the FFO announcement.

Submitting Application Packages: Applications for either project may be submitted in three formats: (1) Full paper (hardcopy) submission; (2) partial paper (hardcopy) submission and partial electronic submission; or (3) full electronic submission, each in accordance with the procedures provided in section IV.B. of the FFO announcement. The content of the application is the same for paper submissions as it is for electronic submissions. Applications completed in accordance with the instructions set forth in the FFO announcement, regardless of the option chosen for submission, will be considered for EDA funding under this request for applications. Incomplete applications and applications submitted by facsimile will not be considered.

Paper Access: Each of the three forms listed above under "Application Package" are separate attachments available at *http://www.eda.gov/InvestmentsGrants/Application.xml*. You may print copies of each of these forms from *http://www.eda.gov/InvestmentsGrants/Application.xml*. You also may obtain paper application packages by contacting the EDA representative listed above under "For Further Information Contact."

Electronic Access: Applicants may apply electronically through *www.grants.gov*, and may access this grant opportunity synopsis by following the instructions provided on *http://www.grants.gov/search/basic.do*. The synopsis will have an application package, which is an electronic file that contains forms pertaining to this specific grant opportunity. On *http://www.grants.gov/search/basic.do*, applicants can perform a basic search for this grant opportunity by completing the "*Keyword Search*," the "*Search by Funding Opportunity Number*," or the "*Search by CFDA Number*" field, and then clicking the "*Search*" button.

Funding Availability: EDA will use funds currently available to make awards under the NTA Program authorized under section 207 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147), as amended (PWEDA), and 13 CFR part 306, subpart A.

Based on recent past awards for projects similar to the information dissemination project solicited under this announcement, the range of total expenditures for such projects has been from $150,000 to $250,000.

Based on recent past awards for research projects similar to the business incubator research project solicited under this announcement, the range of funding awarded for such a project has been from $150,000 to $350,000. The project period will be one year from the date the award is made, but the recipient may be required to remain available to present research findings at select meetings and conferences approximately six to twelve months beyond the project period. Although the schedule for such meetings and conferences will likely not be known until EDA has received the final business incubator research report, they will be scheduled in consultation with the recipient, and the recipient will have ample time to prepare.

Statutory Authority: The authority for the NTA Program is PWEDA. EDA published final regulations (codified at 13 CFR chapter III) in the **Federal Register** on September 27, 2006 (71 FR 56658). The final regulations and PWEDA are accessible on EDA's Internet website at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.* These regulations will govern an award made under this notice and request for applications.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 11.303, Economic Development—Technical Assistance; 11.312, Economic Development—Research and Evaluation.

Eligibility Requirement: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; a public or private non-profit organization or association; and, as provided in section 207 of PWEDA (42 U.S.C. 3147) for the NTA Program, a for-profit organization. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. However, a project may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). Under this competitive solicitation, the Assistant Secretary of Commerce for Economic Development (Assistant Secretary) also has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

While cash contributions are preferred, in-kind contributions, consisting of assumptions of debt or contributions of space, equipment, and services, may provide the non-federal share of the total project cost. See section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project, available as needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications under the NTA Program are not subject to Executive Order 12372, "*Intergovernmental Review of Federal Programs.*"

Evaluation and Selection Procedures: To apply for an award under this request for applications, an eligible applicant must submit a completed application package to EDA before the closing date and time specified in the "Dates" section of this notice, and in the manner provided in section IV. of the FFO announcement. Any application received or transmitted, as the case may be, after 5 p.m. EST on November 9, 2007 will not be considered for funding. Applications that do not meet all items required or that exceed the page limitations set forth in section IV.C. of the FFO announcement will be considered non-responsive and will not be considered for funding. By December 7, 2007, EDA expects to notify the applicants selected for investment assistance under this notice. Unsuccessful applicants will be notified by postal mail that their applications were not selected for funding. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three EDA staff members, all of whom will be full-time federal employees.

Evaluation Criteria: The review panel will evaluate the applications received for each proposed project and rate and rank them using the following criteria of approximate equal weight:

1. Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:

a. Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;

b. Benefits distressed regions; and

c. Demonstrates innovative approaches to stimulate economic development in distressed regions;

2. The degree to which an EDA investment will have strong organizational leadership, relevant project management experience and a significant commitment of human resources talent to ensure the project's successful execution (*see* 13 CFR 301.8(b));

3. The ability of the applicant to implement the proposed project successfully (*see* 13 CFR 301.8);

4. The feasibility of the budget presented; and

5. The cost to the Federal government.

Selection Factors: The Assistant Secretary will be the Selecting Official. EDA expects to fund the highest ranking application for each project, as recommended by the review panel, submitted under this competitive solicitation. However, for one or both projects, the Assistant Secretary may not make any selection, or he may select an application out of rank order for the following reasons: (1) A determination that the application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation. This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet website: *http://www.gpoaccess.gov/fr/retrieve.html.*

Paperwork Reduction Act

This request for applications contains collections of information subject to the requirements of the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved the use of Form ED–900A (*Application for Investment Assistance*) under control number 0610–0094. Form ED–900A's program-specific component (*National Technical Assistance, Training, and Research and Evaluation Program Requirements*) also is approved under OMB control number 0610–0094, and incorporates Forms SF–424A (*Budget Information—Non-Construction Programs*, OMB control number 0348–0044) and SF–424B (*Assurances—Non-Construction Programs*, OMB control number 0348–0040). OMB has approved the use of Form SF–424 (*Application for Financial Assistance*) under control number 4040–0004. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866, "*Regulatory Planning and Review.*"

Executive Order 13132

It has been determined that this notice does not contain "policies that have Federalism implications," as that phrase is defined in Executive Order 13132, "*Federalism.*"

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 15, 2007.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.

[FR Doc. E7–20627 Filed 10–18–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XD42

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet November 4–9, 2007. The Council meeting will begin on Monday, November 5, at 9 a.m., reconvening each day through Friday, November 9. All meetings are open to the public, except a closed session will be held from 9 a.m. until 10 a.m. on Monday, November 4 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Hyatt Regency Mission Bay, San Diego, CA 92109; telephone: (619) 224–1234.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Public Comment

C. Administrative Matters

1. Future Council Meeting Agenda Planning
2. West Coast Governors' Agreement on Ocean Health
3. Magnuson-Stevens Act Reauthorization Implementation
4. Fiscal Matters
5. Membership Appointments and Council Operating Procedures
6. Future Council Meeting Outlook, March Council Meeting Agenda, and Workload Priorities

D. Groundfish Management

1. NMFS Report
2. Exempted Fishing Permits for 2008
3. Stock Assessments and Rebuilding Analyses for 2009–10 Groundfish Fisheries
4. Management Recommendations for 2009–10 Groundfish Fisheries - Part I: Preliminary Range of Acceptable Biological Catch and Optimum Yields
5. Amendment 21: Intersector Allocation
6. Consideration of Inseason Adjustments for 2007 and 2008 Fisheries, Including Pacific Whiting Season Dates
7. Amendment 20: Trawl Rationalization Alternatives (Trawl Individual Quotas and Cooperatives)
8. Final Consideration of Inseason Adjustments
9. Management Recommendations for 2009–10 Groundfish Fisheries - Part II

E. Pacific Halibut Management

Changes to Catch Sharing Plan and 2008 Annual Regulations

F. Salmon Management

1. Preseason Salmon Management Schedule for 2008
2. Salmon Methodology Review

G. Coastal Pelagic Species Management

Pacific Sardine and Pacific Mackerel Management

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, NOVEMBER 4, 2007	
Groundfish Management Team	8 a.m..
Groundfish Advisory Subpanel	10 a.m..
Budget Committee	4 p.m..
MONDAY, NOVEMBER 5, 2007	
Council Secretariat	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..

SCHEDULE OF ANCILLARY MEETINGS—Continued

Scientific and Statistical Committee	8 a.m..
Enforcement Consultants	4:30 p.m..
Trawl Rationalization Information Briefing	7 p.m..
TUESDAY, NOVEMBER 6, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
WEDNESDAY, NOVEMBER 7, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Coastal Pelagic Species Advisory Subpanel	1 p.m..
Coastal Pelagic Species Management Team	1 p.m..
Council Annual Banquet	6 p.m..
THURSDAY, NOVEMBER 8, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Coastal Pelagic Species Advisory Subpanel	8 a.m..
Coastal Pelagic Species Management Team	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Enforcement Consultants	As Necessary.
FRIDAY, NOVEMBER 9, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	As Necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 15, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–20589 Filed 10–18–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XD27

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a series of public hearings regarding Amendments15A and 15B to the Snapper Grouper Fishery Management Plan. Amendment 15A will contain actions to establish management reference points, rebuilding schedules, and rebuilding strategies for snowy grouper, black sea bass, and red porgy. Amendment 15B will contain actions to prohibit the sale of recreationally-caught fish, reduce the effects on sea turtle and smalltooth sawfish if hooked, change the permit renewal period, change the permit transferability requirements, implement a plan to monitor and assess bycatch, establish allocations for snowy grouper and red porgy, and establish Maximum Sustainable Yield (MSY), Optimum Yield (OY) and Maximum Stock Size Threshold (MSST) for golden tilefish.

DATES: The public hearings will be held in November 2007. Written comments for Amendment 15 A must be received in the Council office by 5 p.m. on December 3, 2007. Written comments

for Amendment 15B must be received in the Council office by 5 p.m. on January 11, 2008. See **SUPPLEMENTARY INFORMATION** for the specific dates and times of the public scoping meetings.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, fax: (843) 769–4520 or via email. Email Amendment 15A comments to *SG15A@safmc.net* and Amendment 15B comments to *SG15B@safmc.net*. Copies of the Amendment 15A and Amendment 15B Public Hearing Documents are available from Richard DeVictor, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Richard DeVictor, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *Richard.devictor@safmc.net*.

SUPPLEMENTARY INFORMATION:

Public hearing dates and locations:

All meetings are scheduled to begin at 6 p.m.

•November 13, 2007 - Sombrero Cay Club, 19 Sombrero Boulevard, Marathon, FL 33050; telephone: (305) 743–2250.

•November 14, 2007 - Sheraton Yankee Clipper Hotel, 1140 Seabreeze Boulevard (A1A), Fort Lauderdale, FL 33316; telephone: (954) 524–5551.

•November 15, 2007 - Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920; telephone: (321) 784–0000.

•November 16, 2007 - Comfort Inn Oceanfront, 1515 North 1st Street, Jacksonville Beach, FL 32250; telephone: (904) 241–2311.

•November 27, 2007 - Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; telephone: (912) 748–8888.

•November 28, 2007 - Hilton Garden Inn Charleston Airport, 5265 International Boulevard, North Charleston, SC 29418; telephone: (843) 308–9330.

•November 28, 2007 - Avista Resort, 300 N. Ocean Boulevard, North Myrtle Beach, SC 29582; telephone: (843) 249–2521.

•November 29, 2007 - Shell Island Resort, 2700 Lumina Avenue, Wrightsville Beach, NC 28480; telephone: (910) 256–0418.

•November 30, 2007 - NC Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954; telephone: (252) 473–3494.

•December 3, 2007 - Sheraton Atlantic Beach, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; telephone: (252) 240–1155.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 8, 2007.

Dated: October 15, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–20588 Filed 11–18–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 2, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5178 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 9, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5179 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 16, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5180 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 23, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED. Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5181 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, November 28, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5182 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 30, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–5183 Filed 10–16–07; 4:41 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0001]

TAP Enterprises, Inc., d/b/a Cummins Industrial Tools, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with TAP Enterprises, Inc., d/b/a Cummins Industrial Tools, a corporation, containing a civil penalty of $100,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 5, 2007.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 15, 2007.

Todd A. Stevenson,

Secretary.

I. Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff ("the staff") of the U.S. Consumer Product Safety Commission ("the Commission") and TAP Enterprises, Inc., d/b/a/ Cummins Industrial Tools. ("TAP"), a corporation, in accordance with the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), 16 CFR 1118.20. This Settlement Agreement and the incorporated attached Order settle the staff's allegations set forth below.

II. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2084.

3. TAP is a corporation organized and existing under the laws of the State of Kansas with its principal corporate office located at 650 North Lincoln, Spring Hill, KS 66083. TAP is an importer and retailer of consumer products.

III. Allegations of the Staff

4. Between June 2004 and March 2006, TAP imported and sold nationwide approximately 11,300 Mini 2-Gallon Pancake Compressors ("air compressor(s)"), Model Number 2112.

5. The air compressors are "consumer products" and at the times relevant herein, TAP was a "manufacturer" and a "retailer" of those consumer products, which were "distributed in commerce," as those terms are defined in sections 3(a)(1), (4), (6), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (6), (11), and (12).

6. The air compressors are defective because they contain an undersized power cord which can overheat and pose a fire hazard. In addition, improper assembly of the power cord strain relief component and improper routing of internal conductors can cause a shock hazard to consumers.

7. On or about October 15, 2004, TAP learned from an insurance company of an October 12, 2004 incident, in which a consumer's workshop/studio caught fire as a result of an allegedly defective air compressor. The fire caused $30,000 in property damage.

8. On or about June 30, 2005, the Commission's Clearinghouse sent TAP the investigational report of the October 12, 2004 incident conducted by a Commission investigator.

9. In September 2005, TAP received an incident report in which a consumer alleged that smoke was coming out of his air compressor. Moreover, before September 2005, TAP became aware of a number of warranty claims involving the air compressors, which appear to relate to the defects described in paragraph 6.

10. Although TAP obtained sufficient information to reasonably support the conclusion that the air compressors contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, TAP failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

11. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), TAP knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, TAP is subject to civil penalties for its failure to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

III. TAP's Response

13. TAP denies the staff's allegations that it violated the CPSA as set forth in paragraphs 4 through 12 above.

14. TAP asserts that for purposes of this Settlement Agreement and Order, it is a "manufacturer" as defined by section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4), solely because it is an importer of the subject air compressors. TAP asserts, however, that it did not manufacture the air compressors, nor has it manufactured other consumer products.

15. TAP specifically contests and denies the allegations that it became aware of a number of safety-related warranty claims involving the air compressor before September 2005. Rather, TAP asserts that prior to September 2005, it had received warranty claim requests from consumers that identified only performance-related problems with the compressor (e.g., "not working," "motor froze," "won't build pressure," "etc."). These warranty claim requests identified typical performance issues associated with compressors, and they did not infer that there were any potential safety-related issues associated with the product.

16. TAP further asserts that the CPSC did not provide TAP with a copy of a March 28, 2005, CPSC investigational

report, which documented the fire investigator's simulated test of the compressor, until January 20, 2006. TAP did not have sufficient information to reasonably support the conclusion that it should file a section 15(b) report until January 20, 2006.

17. TAP enters into this Settlement Agreement and Order to avoid incurring additional legal costs and expenses. In settling this matter, TAP does not admit any fault, liability, or statutory or regulatory violation, and this Settlement Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of TAP.

IV. Agreement of the Parties

18. The Commission has jurisdiction over this matter and over TAP under the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

19. In settlement of the staff's allegations, TAP agrees to pay a civil penalty in the amount of $100,000.00 as set forth in the attached incorporated Order.

20. The parties enter this Settlement Agreement for settlement purposes only. The Settlement Agreement does not constitute an admission by TAP or a determination by the Commission that TAP violated the CPSA's reporting requirements in accordance with 16 CFR 1118.20(f).

21. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). Unless the Commission receives a written request not to accept the Settlement Agreement and Order within 15 calendar days, the Agreement will be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register** in accordance with 16 CFR 1118.20(f).

22. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, TAP knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's actions; (iii) a determination by the Commission as to whether TAP failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact or conclusions of law; and (v) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. This Settlement Agreement and Order shall apply to, and be binding upon TAP and each of its successors and assigns.

25. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084, and a violation of this Order may subject TAP to appropriate legal action.

26. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

27. This Settlement Agreement shall not be waived, changed, amended, modified, or otherwise altered without written agreement thereto executed by TAP and approved by the Commission.

28. If after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provisions shall be fully severable. The rest of Settlement Agreement and Order shall remain in full effect, unless the Commission and TAP jointly determine that severing the provision materially changes the purpose of the Settlement Agreement and Order.

TAP Enterprises, Inc.
d/b/a Cummins Industrial Tools.

Dated: September 6, 2007.

Christopher K. Lyon,
Vice President, TAP Enterprises, Inc., d/b/a/ Cummins Industrial Tools, 650 North Lincoln, Spring Hill, KS 66083.

Dated: September 14, 2007.

Jill M. Zucker, Esquire,
Bryan Cave, LLP,
Attorney for TAP Enterprises, Inc., d/b/a Cummins Industrial Tools, 700 Thirteenth Street, NW., Washington, DC 20005–3906.

Consumer Product Safety Commission.
John Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: September 17, 2007.

Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

Order

Upon consideration of the Settlement Agreement entered into between TAP Enterprises, Inc., d/b/a Cummins Industrial Tools ("TAP") and the staff of the Consumer Product Safety Commission ("the Commission"); and the Commission having jurisdiction over the subject matter and TAP; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby, is accepted; and it is

Further ordered that TAP shall pay a civil penalty of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) to the United States Treasury in four installments as follows: TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) shall be paid within twenty (20) calendar days of service of the Final Order upon TAP; TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) shall be paid within 180 days of service of the Final Order upon TAP; TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) shall be paid within 270 days of service of the Final Order upon TAP; and TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) shall be paid within 365 days of service of the Final Order upon TAP. Upon the failure of TAP to make any of the foregoing payments when due, the entire amount of the civil penalty shall become due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 15th day of October, 2007.

By Order of the Commission,

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 07–5152 Filed 10–18–07; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 11, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 04 2007

In reply refer to:
I-07/007895-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $631 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 08-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$388 million
Other	$243 million
TOTAL	$631 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

37	Light Armored Vehicles - Assault Gun (LAV-AG)
26	LAV-25 mm
48	LAV Personnel Carriers
5	Reconnaissance LAVs
5	LAV Ambulances
3	LAV Recovery Vehicles
25	M1165A1 High Mobility Multi-purpose Wheeled Vehicles (HMMWV)
25	M1165A1 HMMWV with winch
124	M240 7.62mm Machine Guns
525	AN/PVS-7D Night Vision Goggles (NVGs);

various M978A2 and M984A2 Heavy Expanded Mobility Tactical Trucks, family of Medium Tactical Vehicles, 120mm Mortar Towed, M242 25mm guns, spare and repair parts; sets, kits, and outfits; support equipment; publications and technical data; personnel training and training equipment; contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (VTD)

(v) Prior Related Cases, if any: numerous cases dating back to 1993

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: OCT 04 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – Light Armored Vehicles and High Mobility Multi-purpose Wheeled Vehicles

The Government of Saudi Arabia has requested a possible sale for

37 Light Armored Vehicles - Assault Gun (LAV-AG)
26 LAV-25 mm
48 LAV Personnel Carriers
5 Reconnaissance LAVs
5 LAV Ambulances
3 LAV Recovery Vehicles
25 M1165A1 High Mobility Multi-purpose Wheeled Vehicles (HMMWV)
25 M1165A1 HMMWV with winch
124 M240 7.62mm Machine Guns
525 AN/PVS-7D Night Vision Goggles (NVGs);

various M978A2 and M984A2 Heavy Expanded Mobility Tactical Trucks, family of Medium Tactical Vehicles, 120mm Mortar Towed, M242 25mm guns, spare and repair parts; sets, kits, and outfits; support equipment; publications and technical data; personnel training and training equipment; contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $631 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of Light Armored Vehicles will provide a highly mobile, light combat vehicle capability enabling Saudi Arabia to rapidly identify, engage, and defeat perimeter security threats and readily employ counter and anti-terrorism measures. The vehicles will enhance the stability and security operations for boundaries and territorial areas encompassing the Arabian Peninsula.

The proposed sale of this equipment and support will not affect the basic military balance in the region. Saudi Arabia is capable of absorbing and maintaining this additional MDE in its inventory. The Light Armored Vehicle is the primary combat vehicle of the Saudi Arabian National Guard (SANG). This proposed procurement by the Royal Saudi land forces will promote interoperability between the SANG and Ministry of Defense and Aviation.

The prime contractor is General Dynamics Land Systems of Sterling Heights, Michigan. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Light Armored Vehicle (LAV) and all associated documentation are unclassified. Sensitive technologies to include the Improved Thermal Sight System (ITSS) and Drivers Vision Enhancer (DVE) are subsystems integral to the LAV-25 mission role variant. The DVE is integral to the other nine mission role variants as well.

2. The night vision device (NVD) proposed for sale is the AN/PVS-7D Night Vision Goggles. These NVDs will be reviewed in compliance with Golden Sentry requirements during all United States reviews.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–5112 Filed 10–18–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency.

ACTION: Notice of membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

DATES: *Effective Date:* Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Donna Riney, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060–6219, (703) 767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:

Mr. Joseph Garcia, Assistant Director, Operations, DCAA, chairperson.
Mr. Ken Saccoccia, Assistant Director, Policy and Plans, DCAA, member.
Mr. John Farenish, General Counsel, DCAA, member.

Regional Performance Review Board:

Mr. Francis Summers, Regional Director, Mid-Atlantic Region, DCAA, chairperson.
Mr. Christopher Andrezze, Regional Director, Western Region, DCAA, member.
Mr. Ed Nelson, Regional Director, Northeastern Region, member.

Dated: October 15, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–5165 Filed 10–18–07; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 19, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

Frequency: Every 3 years.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB program is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain, but for whom independent living goals are feasible.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3425. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20427 Filed 10–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On October 12, 2007, the Department of Education published a comment period notice in the **Federal Register** (Page 58063, Column 2) for the information collection, "U.S. Department of Education Grant Performance Report Form and Instructions (ED 524B)". The abstract has been corrected to state a 3-year clearance instead of a 2-year clearance.

The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: October 16, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–20673 Filed 10–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education

AGENCY: U.S. Department of Education.

ACTION: Final guidance.

SUMMARY: The Secretary is issuing final guidance to modify the standards for racial and ethnic data used by the Department of Education (Department). This guidance provides educational institutions and other recipients of grants and contracts from the Department with clear and straightforward instructions for their collection and reporting of racial and ethnic data.

DATES: This guidance is effective December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C103, Washington, DC 20202–0600, telephone: (202) 708–8196 or Edith K. McArthur, U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., room 9115, Washington, DC 20006, telephone: (202) 502–7393.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On August 7, 2006, the Secretary published a Notice of Proposed Guidance on Maintaining, Collecting, and Reporting Data on Race and Ethnicity to the U.S. Department of Education in the **Federal Register** (71 FR 44866).

In the proposed guidance, the Secretary discussed on pages 44866 through 44868 the major elements of how the Department proposed to modify standards and aggregation categories for collecting racial and ethnic data. As explained in the proposed guidance, these changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (1997 Standards).[1] The 1997 Standards instituted a number of changes for how Federal agencies should collect racial and ethnic data.

This guidance directly addresses three sets of issues:

(1) How educational institutions and other recipients will collect and maintain racial and ethnic data from students and staff;

(2) How educational institutions and other recipients will aggregate racial and ethnic data when reporting those data to the Department; and

(3) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this final guidance provides information regarding the implementation schedule for these changes.

[1] *See* OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782–58790 (October 30, 1997): *http://www.whitehouse.gov/omb/fedreg/1997standards.html.*

Substantive Changes From the Proposed to the Final Guidance

The following is a summary of the substantive changes in this final guidance from the proposed guidance.

We have clarified that when collecting racial and ethnic data at the elementary and secondary school level, the identification of a student's race and ethnicity is to be primarily made by the parents or guardians of the student rather than the student.

In the proposed guidance, we stated that educational institutions and other recipients could use a combined one question format when Hispanic ethnicity is included in the list of options with the racial categories if observer-collected data was used. In the final guidance, we are removing this exception to the general requirement that educational institutions and other recipients use the two-part question (*i.e.*, a question on Hispanic/non-Hispanic ethnicity and a question on race)[2] for collecting racial and ethnic data.

We are extending the final implementation date for reporting school year data under the final guidance from the 2009–2010 school year to the 2010–2011 school year.

Analysis of Comments and Changes

In response to the invitation in the proposed guidance, more than 150 parties submitted comments on the proposed guidance. An analysis of the comments and of the changes in the final guidance since publication of the proposed guidance follows. The analysis generally does not address (a) minor changes, including technical changes, made to the language published in the proposed guidance, and (b) comments that express concerns of a general nature about the Department or other matters that are not directly relevant to this guidance.

I. Background

A. Why publish the guidance?

Comment: Many commenters supported the proposed guidance while others expressed opposition to it. Generally the commenters opposed to the proposed guidance asserted that the changes would undermine the Department's collection of reliable statistical data, have a detrimental impact on statistical trend data, and make it more difficult for the Department to carry out enforcement and oversight efforts. Other commenters objected to collecting any individual racial and ethnic data because they viewed the collection of racial and ethnic data as being contrary to the principle of racial equality.

Discussion: The Department's final guidance satisfies OMB's requirement to establish consistent government-wide guidance at the Federal level for collecting and reporting racial and ethnic data. In particular, it is designed to obtain more accurate information about the increasing number of students who identify with more than one race—a key reason OMB initiated the review and modification of the government-wide standards. The racial and ethnic categories set forth in this final guidance are designed to measure more accurately the race and ethnicity for the general population of students, including the population of students identifying themselves as being members of more than one racial or ethnic group. A part of the Department's mission is "ensuring equal access" to education for all students. This includes collecting racial and ethnic data about the educational progress of students from various racial and ethnic groups in our nation's schools.

Changes: None.

B. What is the difference between collecting data and reporting data?

Comment: Some commenters expressed confusion about the requirement to collect data from individuals using the two-part question and the requirement to report data using seven aggregate reporting categories including the "two or more races" category.

Discussion: The collection of data requires the gathering of information from individuals by educational institutions and other recipients, whereas the reporting of data requires the provision of aggregate information to the Department by educational institutions and other recipients based on the information that has been collected from individuals.

Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question. The first question is whether the respondent is Hispanic/Latino. The second question is whether the respondent is from one or more races using the following five racial groups: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Respondents will not be offered the choice of selecting a "two or more races" category.

The process for reporting the data collected to the Department is different than the process for the collection of data from individuals. When reporting data to the Department, educational institutions and other recipients will report aggregated racial and ethnic data in the following seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

The following examples may be helpful in understanding how the reporting will work.

Example 1: A respondent self-identifies as Hispanic/Latino and as Asian. This respondent is reported only in the Hispanic/Latino category.

Example 2: A respondent self-identifies as Hispanic/Latino and as Asian and Black or African American. This respondent is reported only in the Hispanic/Latino category.

Example 3: A respondent self-identifies as non-Hispanic/Latino and as Native Hawaiian or Other Pacific Islander. This respondent is reported in the Native Hawaiian or Other Pacific Islander category.

Example 4: A respondent self-identifies as non-Hispanic/Latino and as American Indian or Alaska Native and White. This respondent is reported in the two or more races category.

Through this system, there will be no double reporting of persons identifying with multiple races. Similarly, while educational institutions and other recipients will collect both racial and ethnic data using the two-part question for collecting data, they will report only ethnic data for individuals who self-identify as being Hispanic/Latino, even though the individuals will have had the opportunity to designate racial information—in addition to Hispanic/Latino ethnicity—under the two-part question. In this way, there will be no double reporting of individuals who have self-identified as having Hispanic/Latino ethnicity and who also have provided racial information in response to the second question about race. Additionally, these reporting categories will minimize paperwork burden because they are the same reporting categories used by other Federal agencies to which educational institutions and other recipients report aggregate data, such as the Equal Employment Opportunity Commission (EEOC).

Changes: None.

[2] The two part question is sometimes refereed to as the "two-question format."

II. Collecting Data

A. Should We Add New Racial and Ethnic Categories or Clarify the Proposed Categories?

Comment: Many of the commenters recommended one or more changes to the proposed racial and ethnic categories. Some commenters suggested adding categories such as Middle Eastern, Southeast Asian, African (as a different category from African American), Indian/Pakistani (as a different category from Asian), Filipino, and Cape Verdean (as a different category from African American). Other commenters suggested adding a multiracial category. Some commenters suggested that the categories generally are not clear. For example, a commenter asked whether people from Spain or other Spanish cultures should identify as Hispanic/Latino or White.

Discussion: We do not think it would be appropriate to make the changes suggested by the commenters. This final guidance conforms the Department's data collection and aggregate reporting categories to those used by other Federal agencies that require educational institutions and other recipients to collect and report data. At the same time, it imposes the least possible data collection and reporting burden on the education community. The issues raised by these commenters concerning additional categories or clarifications of existing categories were previously addressed by OMB when it announced its "Revisions to the 1977 Standards for the Classification of Federal Data on Race and Ethnicity" in its notice in the **Federal Register**, published on October 30, 1997 (62 FR 58782–58790). The history of the research, meetings, and reasoning that produced OMB's Federal guidance on this issue is available electronically at *http://www.whitehouse.gov/omb/fedreg/1997standards.*

In response to the commenter's question, OMB's guidance provides that individuals from Spain may select "Hispanic/Latino" because of their Spanish cultural heritage. When selecting a race they may select "White" for their European origin or any other race with which they identify.

Changes: None.

B. Should the Two-Part Question Be Required or Made Optional?

Comment: Some commenters supported and some opposed using the two-part question. One commenter argued that it is difficult and confusing to implement use of the two-part question. Some commenters suggested that the Department change the guidance to only recommend use of the two-part question rather than require its use. Others requested instructions for using the collection form that would encourage individuals to answer both questions in the two-part question.

Discussion: The Department will require educational institutions and other recipients to use the two-part question when collecting racial and ethnic data from individuals. This approach will ensure consistency in the categories of data reported to the Department and also assist the Department in carrying out its mission to collect, analyze, and report educational information and statistics that are relevant and useful to practitioners, researchers, policy makers, and the public.[3]

We also note that the Department routinely uses the two-part question when collecting racial and ethnic data from individuals directly and the two-part question is routinely used by a number of Federal agencies, including the EEOC, when collecting data from individuals.

The Department will provide instructions that educational institutions and other recipients can include on their data collection forms in the future. These instructions will be designed to eliminate any confusion when using the form and to encourage individuals to answer both questions.

Additionally, the final guidance permits each educational institution and other recipient to create sub-categories of these seven categories if it desires additional information for its own purposes.

In our review of the proposed guidance, we determined that providing an exception to the use of the two-part question for collecting racial and ethnic data for observer-collected data using a combined one-question format could be confusing for educational institutions and other recipients. Accordingly, we are eliminating that exception and requiring the consistent use of the two-part question for self-identification and (as a last resort) observer-collected data. We hope that this change will help to minimize confusion for educational institutions and other recipients when collecting racial and ethnic data.

Changes: We have revised the guidance in Part IV.A.2 to delete the provision that would have allowed possible use of a combined one-question format when observer identification is used as a last resort.

[3] 20 U.S.C. 9541.

C. Identification of Racial and Ethnic Categories and Missing Data

Comment: Some commenters objected to the Department's decision to continue its current requirement for "observer identification" of the race and ethnicity of elementary and secondary school students when self-identification or identification by the parents does not occur. Some commenters suggested that elementary and secondary school students should be treated like postsecondary students and that observer identification should not be used under any circumstances. Others suggested that observer identification for elementary and secondary school students only be used as a last resort and requested additional guidance about steps to be taken before observer identification is used. Commenters also emphasized that student self-identification is inaccurate at the elementary and secondary school level.

Finally, several commenters suggested that parents, students, and other individuals should be informed about how aggregate data will be reported before completing the two-part question.

Discussion: The Department will continue to require the use of observer identification at the elementary and secondary school level, as a last resort, if racial and ethnic data are not self-identified by the students —typically the students' parents or guardians.

As a general matter, while educational institutions and other recipients are required to comply with this guidance, individuals are not required to self-identify their race or ethnicity. If respondents do not provide information about their race or ethnicity, educational institutions and other recipients should ensure that respondents have refused to self-identify rather than simply overlooked the questions. If adequate opportunity has been provided for respondents to self-identify and respondents still do not answer the questions, observer identification should be used.

While the Department recognizes that obtaining data by observer identification is not as accurate as obtaining data through a self-identification process, places some burden on school district staff, and may be contrary to the wishes of those refusing to self-identify, it is better than the alternative of having no information. Additionally, this approach should assist in discouraging refusals to self-identify because respondents are informed that if they fail to provide the racial and ethnic information someone from the school district will provide it on their behalf. In some instances, this may result in

self-identification. This approach should also provide useful data for carrying out Department monitoring and enforcement responsibilities, and enable the Department to continue "trend" analysis of data. The Department emphasizes that observer identification should only be used as a last resort when a respondent does not self-identify race and ethnicity. It does not permit any representative of an educational institution or other recipient to tell an individual how that individual should classify himself or herself.

In a subsequent document, the Department will provide examples and suggested steps that may be taken before observer identification is used at the elementary and secondary school levels as a last resort and provide examples of statements that educational institutions and other recipients may use with individuals when collecting racial and ethnic data.

The Department agrees that the self-identification by students at the elementary and secondary school level may not reflect what their parents or guardians might have selected, and has changed this final guidance to state that at the elementary and secondary school level, the identification of a student's racial and ethnic categories is to be made primarily by parents or guardians.

Educational institutions and other recipients are free to inform the public about how the aggregate data will be reported to the Department before the respondents complete the two-part question and we encourage educational institutions and other recipients to disseminate this information. We do not believe it is necessary to require dissemination of this information because of the additional burden that it would add for educational institutions and other recipients.

Unlike elementary and secondary institutions, generally, postsecondary institutions and Rehabilitation Services Administration (RSA) grantees use self-identification only and do not use observer identification. As discussed elsewhere in this notice, postsecondary institutions and RSA grantees will also be permitted to continue to include a "race and ethnicity unknown" category when reporting data to the Department. This category is being continued in the Integrated Postsecondary Education Data System (IPEDS) because the National Center for Education Statistics' experience has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences with RSA program beneficiaries.

Changes: We have revised the guidance to clarify that at the elementary and secondary school level, parents or guardians typically identify the racial and ethnic categories of students.

D. Can States Use Their Own System for Collecting State Level Data Solely for State—not Federal—Reporting Requirements?

Comment: Some commenters questioned whether States can request that individuals provide racial and ethnic data that are not included in the two-part question, if the additional data are used solely for State level reporting requirements.

Discussion: Nothing prohibits States (or other entities collecting data from individuals) from requesting more racial and ethnic information solely for State level purposes than is collected using the minimum Federal categories in the two-part question. While educational institutions and other recipients may collect additional information for their own purposes, they must collect the data for the Department using the two-part question and must use the seven categories required by this final guidance when reporting aggregate racial and ethnic data to the Department. Thus, for example, a State could choose to collect information using racial subcategories such as Japanese, Chinese, or Korean for State purposes, but would have to report such students to the Department using only the Asian racial category. Similarly, if a State wanted to collect information on subcategories of the Hispanic/Latino ethnic category, such as Puerto Rican and Mexican, it could do so, but would need to report each of the students in the subcategories as Hispanic/Latino to the Department. When collecting data solely for the educational institution's or other recipient's purposes, the accuracy of the Federal data collection cannot be compromised.

Changes: None.

E. Recordkeeping—Length of Time for Maintaining Original Responses

Comment: Some commenters expressed concern about our proposal that States and school districts be required to maintain data collected on the two-part question for the period of time specified in the instructions to the information collection rather than a longer time period. The commenters were concerned that the data will not be available if needed for the resolution of issues that arise in the future. Other commenters suggested that the original responses should be made available electronically for longer than a three-year period and suggested that the Department ask Congress for money to do so.

Discussion: When the Department requests racial and ethnic data from educational institutions and other recipients, the Department indicates in the instructions for the collection how long the original individual responses must be kept. Under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or Department regulations applicable to the grant, or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations. These records include the individual responses to the two-part question. 5 CFR 1320.4(c). One exception to the general three-year period is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

In addition to the record keeping requirement discussed above, we also note that if further racial or ethnic information about a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information directly from educational institutions and other recipients, such as when the Department's Office for Civil Rights (OCR) requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

The three-year requirement generally used by the Department allows the government to verify information whenever a question about accuracy is brought up. Nothing in this guidance precludes educational institutions and other recipients from maintaining records for longer periods of time than required by the Department. However, we do not believe it is appropriate to require retention of records for longer periods of time because the burden, i.e., costs of record keeping, would exceed the expected benefits from having the records.

Changes: None.

III. Reporting Aggregate Data Using Seven Categories

A. Hispanic/Latino Reporting

Comment: Some commenters opposed counting any individual as Hispanic/Latino who selected the Hispanic/Latino category and one or more of the race categories, suggesting that this approach will result in over-counting individuals who are Hispanic/Latino. Other commenters stated that they do not have enough information to understand whether the proposed process allows for more accurate reporting of individuals who are Hispanic/Latino. Some commenters suggested that individuals who are Hispanic/Latino should also be reported by race and others suggested that individuals who are mixed race Hispanic/Latino should be counted twice.

Discussion: We do not agree that use of the two-part question in collecting racial and ethnic data will result in over-counting of individuals who have responded affirmatively to the question about Hispanic/Latino ethnicity and also have provided racial information when responding to the two-part question. When educational institutions report data to the Department using the seven reporting categories, they will only report ethnic data from individuals who report being Hispanic/Latino. Institutions will not report any information on the race of those individuals to the Department, if the Hispanic/Latino individuals have identified a race as well.

The approach we are adopting also is very likely to result in more accurate reporting of data on individuals who are Hispanic/Latino. The most frequent cases of an individual not reporting race occur for individuals who identify themselves as Hispanic/Latino. Research conducted by Federal agencies has shown that a two-part question typically results in more complete reporting of Hispanic/Latino ethnicity, provides flexibility, and helps to ensure data quality. Under this approach, individuals who are Hispanic/Latino are asked to identify a race too.

This approach is also part of a longstanding Federal effort to obtain accurate ethnic data. In 1976, in response to an apparent under-count of Americans of Spanish origin or descent in the 1970 Census, Congress passed Public Law 94–311 calling for the collection, analysis, and publication of Federal statistics on persons of Spanish origin or decent. In 1977, OMB issued the "Race and Ethnic Standards for Federal Statistics and Administrative Reporting," adding Hispanic ethnicity to Federal reports. (Subsequently reissued as Statistical Policy Directive No. 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting." 43 FR 19269 (May 6, 1978). In a further effort to enhance accuracy, OMB's 1997 Revised Standards recommended that Federal forms ask two questions: The first about ethnicity, and the second about race. This decision stemmed, in part, from research sponsored by the Bureau of Labor Statistics showing that significantly more people appropriately identified as Hispanic/Latino or Latino when they were asked separately about Hispanic or Latino origin. (*See* Recommendations from the Interagency Committee for the Review of the Race and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for Ethnicity, 62 FR 36874 (July 9, 1997) (Recommendations from the Interagency Committee) Appendix 2, Chapter 4.7). The Department's decision to adopt a two-part question is part of this ongoing effort to design Federal reports that yield more accurate counts of individuals who are Hispanic/Latino. *See* Standards for Classification of Federal Data on Race and Ethnicity, 60 FR 44674, 44678–44679 (August 28, 1995); *See also* Recommendations from the Interagency Committee, Appendix 2, Chapter 4 (detailing various effects and data quality concerns stemming from the use of combined and/or separate questions on race and Hispanic/Latino origin.)

With respect to the commenters' suggestions that individuals who are Hispanic/Latino should also be reported by race and that individuals who are of more than one race and Hispanic/Latino should be counted twice, the Department has determined that the best approach for racial and ethnic information to be reported by educational institutions and other recipients is to include individuals who are Hispanic/Latino of any race only in the ethnic category. The Department wants to minimize the reporting burdens for educational institutions and other recipients. We recognize that in most instances the Department will not need to know the race identified by individuals who are Hispanic/Latino. However, in some instances in the exercise of the Department's monitoring and enforcement responsibilities, it may become necessary for the Department to know the race identified by individuals who are Hispanic/Latino. Therefore, it is necessary for educational institutions and other recipients to collect these data from individuals and maintain the records for the timeframe announced by the Department in each information collection.[4]

Changes: None.

B. Two or More Races Category Reporting

1. *Addition of the two or more races category will change population counts in single race categories.*

Comment: A number of commenters suggested that using the two or more races category will result in longitudinal data falsely showing declining minority populations in current single race categories. Some commenters suggested that this approach will reflect a significant reduction in Black and White student populations at State and Federal levels, changes in the reported populations of Asians and American Indians in certain States, and significantly reduced counts of Native Hawaiians and Other Pacific Islanders. Some commenters suggested that this category be changed to report more information about the multiple races identified by individuals.

Discussion: In most instances, the Department anticipates that the size of the two or more races category will not be large enough to cause significant shifts in student demographics. Clearly, there will be changes causing reductions in the numbers of students reported in some categories when aggregate reporting shifts from using five categories to using seven. However, the change in categories will result in more accurate data. We also note that the former "Asian/Pacific Islander" category will now be divided into two different categories—Asian and Native Hawaiian or Other Pacific Islander. The Department plans to monitor the data trends reported. If necessary, we will request access to the specific racial and ethnic data provided in response to the two-part question by individual respondents.

We also note that OMB's bridging guidance [5] describes methods to accurately report trend data over a time

[4] The Department also notes that the increase in the number of minority students enrolled in our nation's schools largely reflects the growth in the proportion of students who are identified as Hispanic/Latino—from six percent in 1972 to 20 percent in 2005. During the same period, White enrollment declined to 58 percent of the school population in 2005, from 78 percent in 1972. African American enrollment changed little: Blacks were 14.8 percent of all students in 1972 and 15.6 percent of all students in 2005. (*The Condition of Education http://nces.ed.gov/programs/coe/2007/section/indicator05.asp*)

[5] OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000, available on the Internet at: *http://www.whitehouse.gov/omb/inforeg/re_oppctobles.pdf*

span that encompasses this change. We encourage educational institutions and other recipients to refer to the bridging guidance when preparing multi-year reports utilizing education data before and after implementing the changes required in the final guidance. (*See* discussion in III.D. in this notice regarding bridging.)

Changes: None.

2. *Two or more races category's implication for civil rights enforcement and research purposes.*

Comment: Some commenters suggested that reporting two or more races will have a detrimental impact on compliance with, and enforcement of, civil rights laws; ignores OMB guidance for aggregation and allocation of multiple race responses for purposes of civil rights reporting; and limits public access to important information by civil rights advocates, parents, and others. Some commenters suggested that this approach will preclude full disclosure of information relating to government programs. Other commenters also suggested that subgroup data will be difficult to request from the State, and that it will be difficult to bridge longitudinal data.

Discussion: The Department's final guidance, which is consistent with OMB guidance, is designed to ensure that OCR and other offices in the Department have access to all necessary racial and ethnic information about all individuals participating in federally-funded programs for monitoring, enforcement, and research purposes. If any Department office needs additional racial and ethnic information about individuals, the final guidance requires educational institutions and other recipients to maintain the original responses from staff and students for a specific length of time announced at the time of the data collection. In addition to being required to maintain this detailed information for the Department, States, educational institutions and other recipients are encouraged to continue to make such data and information available to the public, civil rights advocates, parents, and other members of the public, within the constraints permitted under applicable privacy and other laws. When reporting racial and ethnic data, these entities are also encouraged to make public their methods used to bridge or allocate the data longitudinally. Accordingly, we do not believe any modification or change with respect to the two or more races category is necessary.

Changes: None.

3. *Alternatives proposed for reporting data.*

Comment: Some commenters suggested reporting the number of individuals selecting each racial category plus an unduplicated total. Others suggested that every category selected by a respondent in the two-part question should be reported. Some commenters suggested that students who selected more than one race should be put in the minority category identified, rather than in the two or more races category. Other commenters questioned why the Department's reporting differs from the reporting of the Census Bureau and suggested that the final guidance highlight for States the differences between Department and Census collections so that States can collect their data in a way that allows them to generate reports that allow comparisons with Census data.

Discussion: Reporting racial and ethnic data using the seven aggregate categories provides the Department with more accurate information reflecting the growing diversity of our nation while minimizing the implementation burden placed on educational institutions and other recipients. Under this approach individuals are given the opportunity to select more than one race and ethnicity. If they desire to do so, educational institutions and other recipients remain free to determine when and how they might use and report these data not reported in the aggregate to the Department in other contexts. Reporting of the data in the manner suggested by the commenters, however, would create additional burden on education institutions and other recipients and would not be necessary for Department purposes.

We recognize that there may be differences in how different Federal agencies collect racial and ethnic data. The Department will continue to study the similarities and differences between the data received by the Department and data received by other Federal agencies and will consider providing any appropriate guidance to the public on this matter, in the future.

Changes: None.

C. Reporting Additional Racial or Ethnic Data

Comment: Several commenters suggested that the proposed guidance limits publicly available racial and ethnic data and should be expanded to report additional categories of racial and ethnic data. Another commenter suggested that the Department should not follow the same approach as the Equal Employment Opportunity Commission (EEOC) because the objectives of the Department in collecting data are different from those of the EEOC.

Discussion: Under the Paperwork Reduction Act, the Department is required to weigh the costs of collecting any additional data against the benefits expected from having that data. The Department has determined that the expected costs to those educational institutions and other recipients of collecting and reporting additional data outweigh the informational and other benefits. Under the final guidance, the public continues to be permitted to request access to publicly available racial and ethnic data from educational institutions and other recipients.

The Department, like all other Federal agencies, including the EEOC, is similarly situated when collecting data needed to carry out each agency's mission. In accordance with the high standards established by OMB, respect for individual dignity has guided the process and methods for collecting racial and ethnic data at the same time that an effort has been made to minimize the burden placed on those entities providing the data. To do this, the Department must weigh the costs imposed on those who must provide the data with the benefits to those who could use more extensive information. For example, in addition to serving students, educational institutions and other recipients are also employers required to report racial and ethnic data to the EEOC. The Department repeatedly has heard from educational institutions and other recipients that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and they are not forced to provide different or inconsistent racial and ethnic data to Federal agencies. Our adoption of this final guidance reflects our efforts and other agencies' efforts to alleviate these concerns and help to achieve consistency across different agencies' data collections.

Changes: None.

D. Bridging and Other Allocation Methods

Comment: Some commenters suggested that more guidance is needed about bridging and allocation measures and suggested that the Department encourage States to share bridging information when final guidance is published. Some commenters viewed bridging as impossible. Other commenters agreed that specific bridging should not be required for NCLB.

Discussion: The Department does not agree that bridging is impossible or that

bridging should not be required under NCLB. Further guidance on bridging the data collected before and after these changes take effect can be found in OMB's December 15, 2000 Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, available at the following Internet address: *http://www.whitehouse.gov/omb/inforeg/re_app-ctables.pdf*. The OMB Guidance discusses eight techniques that can be used for bridging data in the two or more races category back to the five single-race groups.

Additionally, guidance on how to allocate multiple race responses to a single race response category are found in OMB's March 9, 2000, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement available at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b00-02.html*. For example, multiple race responses that combine one minority race and White could be allocated to the minority race.

Changes: None.

IV. No Child Left Behind (NCLB) Reporting

Comment: Some commenters suggested that counting all individuals identifying themselves as being Hispanic/Latino and another race only as Hispanic/Latino without identifying any race and using the two or more races category to report all individuals identifying as non-Hispanic/Latino and two racial groups will result in longitudinal data falsely showing declining minority populations in current "major racial groups" used by States when making NCLB adequate yearly progress (AYP) determinations.

Discussion: Under NCLB, States will continue to have discretion in determining which racial groups are "major" for the purposes of fulfilling NCLB accountability requirements for making AYP determinations and issuing State and local report cards. Using data collected at the school level, States will continue to be able to count individual students as a part of the same "major" racial groups for AYP purposes in the same manner that they do currently. States implementing this final guidance are not required to change the racial and ethnic categories used for AYP determinations. Nor are they required to change the manner in which individual students are identified at the school level for the purposes of making AYP determinations. For example, if a State currently uses the Asian/Pacific Islander group for AYP determinations it can continue to use this category as a "major" racial group rather than using the two new categories of (1) Asian, and (2) Native Hawaiian or Other Pacific Islander.[6] Additionally, if a student is currently identified as African American for AYP purposes at the school level when the student has one African American parent and one Hispanic parent, the school may continue to identify the student as African American for AYP determinations. For all other aggregate Federal data collections, however, the school and State will be required to identify this student as Hispanic under this final guidance.

States will also have the discretion to change the "major" racial groups used to make AYP determinations. For example, a State may change the "major" racial groups used to aggregate students for AYP purposes to the same seven categories required by this final guidance for all other aggregate reporting to the Department.

If a State chooses to make changes to the racial and ethnic data categories it will use under NCLB, the State will be required to submit an amendment to its Consolidated State Accountability Workbook to the Department. If the manner in which students are aggregated into major racial and ethnic groups is changed for AYP purposes, then States may want to use bridging and allocation methods to ensure that accountability determinations accurately account for possible shifts in demographics and are not due to the change in the manner in which students are included in the major racial and ethnic groups.

During the Department's routine monitoring of Title I programs, we expect to ask States among other things about performance or accountability trends and the extent to which they may relate to any changes in the demographic measurements that may have been brought about by the changes in the final guidance.

Changes: None.

[6] However, if a State does not change its "major" racial and ethnic groups for AYP determinations, it is possible that the racial and ethnic categories it is required to collect using the two-part question may be different from the racial and ethnic categories previously used by States and districts to collect data for AYP determinations. Therefore, it may be necessary for States or districts to ensure that once the data are collected, students continue to be identified using the same criteria used in the past. For example, if a State or school district continues to use "Asian/Pacific Islander" as a "major" racial group for AYP determinations, it will be necessary for the State or district to add the numbers of students collected using the two-part question for the "Asian" and "Native Hawaiian and Other Pacific Islander" categories together in order to continue to identify all "Asian/Pacific Islander" students.

V. Individuals With Disabilities Education Act (IDEA)

Comment: Some commenters suggested that like NCLB accountability determinations, determinations about disproportional representation by minorities in special education required under the IDEA will be seriously undermined by the proposed reporting categories.

Discussion: Among other required data, IDEA requires that States report data to the Secretary on the number and percentage of children by race, ethnicity, and disability category, who are receiving special education and related services under the IDEA. IDEA also requires that States report these data disaggregated for children being served in particular types of educational settings, and receiving certain types of discipline. 20 U.S.C. 1418(a)(1)(A). IDEA further requires that States examine data to determine if significant racial and ethnic disproportionality is occurring in the State and in local educational agencies (LEA) of the State with respect to the identification of children as children with disabilities, including the identification of children in specific disability categories; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 20 U.S.C. 1418(d); 34 CFR 300.646. As a part of their State Annual Performance Report under section 616 of the IDEA, 20 U.S.C. 1416, States also are required to determine whether disproportionate racial and ethnic representation in special education and related services is occurring in LEAs of the State, and whether that disproportionate racial and ethnic representation is the result of inappropriate identification.

There is no requirement in IDEA that States either report longitudinal data to the Department or conduct longitudinal analyses of the data. However, we encourage States to bridge and/or use one of the data allocation measures in their transition to the new racial and ethnic reporting categories, as appropriate. For example, States that are using a longitudinal analysis as a part of identifying LEAs with significant disproportionality or disproportionate representation that is the result of inappropriate identification will, if they continue to employ a longitudinal analysis in making one of these determinations, need to use one of these bridging and/or allocation methods as they transition to using new categories.

Changes: None.

VI. Postsecondary Data Collections

A. Postsecondary Institutions and RSA Grantee Handling of Missing Data

Comment: Some commenters asked how postsecondary institutions and RSA grantees should report missing data in the aggregate.

Discussion: The option to report a race/ethnicity unknown category will continue to be permitted for postsecondary institutions and RSA grantees. This category ("unknown") will not appear on the individual data collection forms provided to the individual students, staff, or RSA clients, but rather on the aggregate data reporting forms used for reporting the aggregate data to the Department. An RSA grantee or postsecondary education institution that does not use the race/ethnicity unknown category is required to report the racial and ethnic data about 100% of the participants in their program using seven categories.

Changes: None.

B. Can IPEDS data be reported before 2009?

Comment: Some commenters asked whether the data reported to the Department from institutions of higher education under the Integrated Postsecondary Education Data System (IPEDS) can be reported before 2009.

Discussion: Yes. Although not required to do so, educational institutions and other recipients, including institutions of higher education reporting IPEDS data that collect individual-level data using the two-part question are encouraged to immediately begin reporting aggregate data to the Department in accordance with this final guidance.

Changes: None.

VII. Guidance on Data Storage and Coding

Comment: A number of commenters asked for guidance concerning data storage and coding and additional clarification of definitions to promote data consistency across States on current State-defined voluntary questions. Others expressed concern that current education information systems are not designed to collect data with multiple self-selection options, as is required by the two-part question. Some commenters expressed concern that the Department was dictating the set of codes to be used in the databases containing this information which would require them to change their current codes and be unable to keep valuable information about their students.

Discussion: The final guidance does not dictate the methods for educational institutions and other recipients to use when developing "choice for codes" or "coding structure" for the data maintained by such entities. Educational institutions and other recipients are permitted to design their own coding structure, provided that they are able to report the racial and ethnic data using the seven aggregate categories set forth in this final guidance, and maintain the individual reports so that the data can be tabulated with more specificity, if needed. (*See* discussion elsewhere in this notice regarding use of the two-part question.)

The Department recognizes that there are numerous education information systems that will need to be adjusted to receive, store, and report the racial and ethnic data using the new categories. There are many strategies for making this system development transition simple and direct. The Department will separately provide information compiling many of these strategies.

Changes: None.

VIII. Implementation Timeline—Delay

Comment: A number of commenters expressed support of the proposed guidance and their desire to begin reporting using the proposed seven categories immediately. Some individuals and organizations responding to the proposed guidance recommended that the Department delay the issuance of any final guidance until uncertainties about the effects of the change could be resolved and further studies made. However, other commenters suggested that the three-year implementation timeline was sufficient.

Discussion: The Department will change the final implementation date of this final guidance from reporting data beginning with data from the 2009–2010 school year to reporting data beginning with data from the 2010–2011 school year. However, the Department will not delay issuing final guidance or commission additional research.

The Department believes that this extension of time of one year will give educational institutions and other recipients adequate time to make the changes required by this final guidance. Educational institutions and other recipients desiring to collect and report racial and ethnic data in accordance with this final guidance before the fall of 2010 may do so.

Changes: We have revised the final guidance to require educational institutions and other recipients to collect and report racial and ethnic data in accordance with this final guidance with implementation required to be completed by the fall of 2010 for the 2010–2011 school year.

Final Guidance

I. Purpose

This final guidance is provided to the public on how the U.S. Department of Education (the Department) is modifying standards and aggregation categories for collecting and reporting racial and ethnic information. These changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for the Classification of Federal Data on Race and Ethnicity (1997 Standards).[7] The 1997 Standards instituted a number of changes for how Federal agencies should collect and report racial and ethnic data.

This final guidance is designed to be straightforward and easy to implement. Whenever possible, we have developed a Department-wide standard. However, in certain situations, we have tailored the standard to the different needs of the institutions collecting the data.[8] The Department recognizes that implementing changes to improve the quality of racial and ethnic data may result in an additional burden to educational institutions. In developing this final guidance, we have sought to minimize the burden of implementation on local and State educational agencies (LEAs and SEAs), schools, colleges, universities (hereinafter collectively referred to as "educational institutions"), and other recipients of grants and contracts from the Department (hereinafter referred to as "other recipients"), while developing guidance that would result in the collection of comprehensive and accurate racial and ethnic data that the Department needs to fulfill its responsibilities. We have done so by using the same reporting categories used

[7] *See* OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58781 (October 30, 1997); *http://www.whitehouse.gov/omb/fedreg/1997standards.html.*

[8] For example, for the purposes of determining adequate yearly progress under the No Child Left Behind Act of 2001, States are allowed to define major racial and ethnic groups using reporting categories that may be different than the seven categories announced in this guidance. These differences may reflect the State's use of more categories than the seven, fewer categories than the seven, or subsets of the seven categories announced in this guidance. Additionally, in the Integrated Postsecondary Education Data Systems and Rehabilitation Services Administration data collections, grantees are permitted to use a race unknown category when reporting data to the Department, although in elementary and secondary programs use of a race unknown category is not permitted. (*See* discussion elsewhere in this guidance.)

by the Equal Employment Opportunity Commission (EEOC), so that educational institutions and other recipients can use the same reporting requirements for students and staff.

This final guidance applies to the collection of individual-level data and to aggregate racial and ethnic data reported to the Department. Aggregate data are the total racial and ethnic data that are reported to the Department by educational institutions and other recipients. The data are collected by educational institutions and other recipients and reported by each recipient in the aggregate to the Department. This final guidance directly addresses three sets of issues:

(1) How educational institutions and other recipients will collect and maintain racial and ethnic data from students and staff;

(2) How educational institutions and other recipients will aggregate racial and ethnic data when reporting those data to the Department; and

(3) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this final guidance provides information regarding the implementation schedule for these changes.

II. Background

In October 1997, OMB issued revised standards for the collection and reporting of racial and ethnic data. A transition period was provided in order for agencies to review the results of Census 2000, the first national data collection that implemented the revised standards. (*See* the discussion in Part IV.) The Department will begin the process of implementing all necessary changes, with the implementation required to be completed by the fall of 2010 for the 2010–2011 school year.[9]

The 1997 Standards include several important changes:

A. OMB revised the minimum set of racial categories by separating the category "Asian or Pacific Islander" into two separate categories—one for "Asian" and one for "Native Hawaiian or Other Pacific Islander." Therefore, under the 1997 Standards, there are a minimum of five racial categories:

(1) American Indian or Alaska Native,
(2) Asian,
(3) Black or African American,
(4) Native Hawaiian or Other Pacific Islander, and
(5) White.

B. For the first time, individuals have the opportunity to identify themselves as being of or belonging to more than one race. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to two or more racial groups. For the population under 18 years old, 4.0 percent (or 2.8 million children) selected two or more races.[10]

C. In an effort to allow individuals—rather than a third party—to report their race and ethnicity, the 1997 Standards strongly encourage "self-identification" of race and ethnicity rather than third party "observer identification."

D. Under the 1997 Standards, OMB strongly encouraged the use of a two-part question when collecting racial and ethnic data; *i.e.*, individuals should first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals should select one or more races from the five racial categories.

III. Summary of Guidance

The Department is modifying its standards for the collection and reporting of racial and ethnic data in the following manner:

A. Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question on the educational institution's or other recipient's survey instrument. The first question would be whether or not the respondent is Hispanic/Latino.

Hispanic or Latino means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic/Latino or Latino."

The second question would ask the respondent to select one or more races from the following five racial groups:

(1) *American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment.

(2) *Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) *Black or African American.* A person having origins in any of the Black racial groups of Africa.

(4) *Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(5) *White.* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. *See* 1997 Standards, 62 FR 58789 (October 30, 1997).

(*See* the discussion in Part IV.A.1 and 2 of this notice.)

B. Educational institutions and other recipients should allow students, parents, and staff to "self-identify" race and ethnicity unless self-identification is not practicable or feasible. (*See* the discussion in Part IV.A.3 of this notice.)

C. The Department encourages educational institutions and other recipients to allow all students and staff the opportunity to re-identify their race and ethnicity under the 1997 Standards. (*See* the discussion in Part IV.A.4 of this notice.)

D. Educational institutions and other recipients will be required to report aggregated racial and ethnic data in seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,
(2) American Indian or Alaska Native,
(3) Asian,
(4) Black or African American,
(5) Native Hawaiian or Other Pacific Islander,
(6) White, and
(7) Two or more races. (*See* the discussion in Part IV.B.1 of this notice.)

E. The Department will continue its current practice for handling the reporting of individuals who do not self-identify a race and/or an ethnicity. Elementary and secondary educational institutions will continue to use observer identification when a respondent—typically a parent or guardian at the elementary and secondary school level—refuses to self-identify the student's race and/or ethnicity. The Department will not include a "race and/or ethnicity unknown" category for its aggregate elementary and secondary reporting of racial and ethnic data. The Integrated Postsecondary Education Data System (IPEDS) will continue to use the category of "nonresident alien" as an alternative to collecting race/ethnicity from nonresident aliens (information that is not needed for civil rights reporting purposes). IPEDS will also continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly,

[9] Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

[10] *See* United States Census Bureau, The Two or More Races Population: 2000, Census 2000 Brief, at p. 9 (November 2001) (hereinafter "The Two or More Races Population"); this information is on the Internet at the following address: *http://www.census.gov/prod/2001pubs/c2kbr01-6.pdf.*

the Rehabilitation Services Administration (RSA) grantees will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. The "race and/or ethnicity unknown" category should not appear on forms provided to postsecondary students and staff or to clients and staff of RSA recipients. (*See* the discussion in Part IV.B.2 of this notice.)

F. When the Department asks educational institutions and other recipients to report racial and ethnic data, the Department indicates in the instructions to the collection how long educational institutions and other recipients are required to keep the original individual responses from staff and students to requests for racial and ethnic data. In addition, at a minimum, generally, a Department grantee or subgrantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent under the grant or Department regulations. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action. (*See* the discussion in Part IV.A.5 of this notice.)

G. States will continue to have discretion in determining which racial and ethnic groups will be used for accountability and reporting purposes under the ESEA. (*See* the discussion in Part IV.C of this notice.)

H. Educational institutions and other recipients will be required to implement this guidance no later than the fall of 2010 with data for the 2010–2011 school year, and are encouraged to do so before that date, if feasible. (*See* the discussion in Part VI. of this notice.)

IV. The Department's Implementation of OMB's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

The Department has carefully examined its options for implementing the 1997 Standards. Department staff met or spoke with a variety of individuals and organizations representing educational institutions to ascertain their needs and interests. The Department has heard consistently that major revisions to the collection of racial and ethnic data would impose a substantial burden on educational institutions and other recipients as they adopt new data systems or modify existing systems, prepare new forms, and train staff at all levels to implement these changes. Furthermore, the Department's implementation plan had to be effective for the Department's diverse uses for racial and ethnic data, such as research and statistical analysis, measuring accountability and student achievement, civil rights enforcement, and monitoring of the identification and placement of students in special education.

Finally, the Department repeatedly heard from educational institutions that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and educational institutions are not forced to provide different and/or inconsistent racial and ethnic data to Federal agencies. In response to these repeated requests, the Department waited until after the EEOC announced its final implementation plan, which was published in November 2005, because the EEOC collects racial and ethnic data for staff in elementary and secondary schools and districts.[11]

A. *How Educational Institutions and Other Recipients Will Be Required To Collect Racial and Ethnic Data From Students and Staff.* This portion of the final guidance, Part A, explains how educational institutions and other recipients will *collect* racial and ethnic data; Part B, which follows, explains how racial and ethnic data will be *reported* to the Department.

1. *Educational Institutions and Other Recipients Will Be Required To Allow Students and Staff To Select One or More Races From Five Racial Groups.* Educational institutions and other recipients will be required to allow students and staff to select one or more races from the following five racial groups:

(1) American Indian or Alaska Native;
(2) Asian;
(3) Black or African American;
(4) Native Hawaiian or Other Pacific Islander; and
(5) White.

This is the minimum number of categories that educational institutions and other recipients will be required to use for purposes other than NCLB reporting. Any additional categories that educational institutions and other recipients choose to use to collect information must be subcategories of these categories (such as Japanese, Chinese, Korean, and Pakistani—subcategories of Asian). Students and staff will then be able to select one or more of these subcategories.

2. *Educational Institutions and Other Recipients Will Be Required To Use a Two-part Question When Collecting Racial and Ethnic Data.* Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question. Using the two-part question, the first question asks whether or not the respondent is Hispanic/Latino. The second question allows individuals to select one or more races from the five racial groups listed in paragraph 1 of this Part, and Hispanic/Latino is not included in the list of racial categories. A two-part question provides flexibility and ensures data quality. In particular, a two-part question typically results in more complete reporting of Hispanic/Latino ethnicity; however, the most frequent cases of an individual not reporting a race occur for individuals who identify themselves as Hispanic/Latino. Therefore, educational institutions and other recipients should include instructions that encourage students and staff to answer both questions.

3. *Educational Institutions and Other Recipients Should Allow Students and Staff To Self-Identify Their Race and Ethnicity Unless Self-Identification Is Not Practicable or Feasible.* Educational institutions and other recipients should allow students—at the elementary and secondary level, typically the students' parents or guardians, on behalf of the students—and staff to self-identify their race and ethnicity unless self-identification is not practicable or feasible. If a respondent does not provide his or her race and ethnicity, educational institutions and other recipients should ensure that the respondent is refusing to self-identify rather than simply overlooking the question.

At the elementary and secondary level, if the educational institution or other recipient has provided adequate opportunity for the respondent to self-identify and he or she still leaves the items blank or refuses to complete them, observer identification should be used. It will typically be more appropriate for students' parents or guardians to self-identify the student's race and ethnicity. In all other instances, it will be more

[11] *See* EEOC, Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request (EEO–1), 70 FR 71294–71303 (November 28, 2005) (hereinafter "EEOC Notice"); this notice is on the Internet at the following address: *http://www.eeoc.gov/eeo1/See also* EEOC, Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) Comment Request, 68 FR 34965, 34967 (June 11, 2003).

appropriate for the individuals to self-identify.

4. *The Department Encourages Educational Institutions and Other Recipients To Allow All Current Students and Staff to Re-Identify Their Race and Ethnicity Using the 1997 Standards.* Students are typically asked to provide racial and ethnic information upon entrance or application to an educational institution or other recipient's program. Staff members typically provide this information upon employment or application for employment. The Department encourages educational institutions and other recipients to allow all students and staff, and other individuals from whom data are collected, the opportunity to re-identify their race and ethnicity under the 1997 Standards.[12] Re-identification will provide all students, staff, and other individuals the opportunity to select more than one race and to report both their ethnicity and their race separately, and will allow all individuals who previously identified themselves as within the Asian or Pacific Islander category the opportunity to select either "Asian" or "Native Hawaiian or Other Pacific Islander," thereby conforming all racial and ethnic information to the 1997 Standards. If all individuals are not provided the opportunity to identify their race and ethnicity in a manner that is consistent with the 1997 Standards, data within schools, school districts, and States will not accurately reflect the diversity of the population; and data on those who were permitted to identify their race and ethnicity under the 1997 Standards will not be easily comparable with data on those who were not permitted to identify their race and ethnicity under the 1997 Standards.

The Department's final guidance does not mandate re-identification because we recognize the considerable one-time cost that re-identification would entail. Also, the 1997 Standards do not require existing records to be updated. However, the Department's final guidance reflects our expectation that most educational institutions and other recipients will provide all respondents the opportunity to re-identify their race and ethnicity under the 1997 Standards.

[12] This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the Council of Chief State School Officers and the Policy Panel on Racial/Ethnic Data Collection, a panel sponsored by the National Postsecondary Education Cooperative of the National Center for Education Statistics and the National Science Foundation in April 1999. Both have recommended that all respondents be permitted to identify their race and ethnicity under the 1997 Standards.

The final guidance requires educational institutions and other recipients to provide students and staff who enter an educational institution or other recipient program on or after the implementation deadline the opportunity to identify their race and ethnicity in a manner that is consistent with this final guidance. Thus, those educational institutions and other recipients that do not conduct a re-identification will transition to the new standards over time as new staff and students enter.

5. *Maintaining the Original Responses from Staff and Students to Support Requests for Racial and Ethnic Data.* When the Department requests racial and ethnic data from educational institutions and other recipients, the Department indicates in the instructions to the collection how long each office asks, or requires, educational institutions and other recipients to keep the original individual responses to the request.

At a minimum, under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations. These would include records on racial and/or ethnic data and the individual responses. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

If additional information on the race or ethnicity of a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information from educational institutions and other recipients, such as when OCR requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

B. *The Aggregate Categories Educational Institutions and Other Recipients Will Be Required To Use To Report Racial and Ethnic Data to the Department and How To Handle Missing Data.* In contrast to the discussion in Part IV.A of this notice, which addressed how educational institutions and other recipients will collect racial and ethnic data, this section will examine how educational institutions and other recipients will report these racial and ethnic data to the Department.

1. *The Aggregate Categories Educational Institutions and Other Recipients Will Be Required To Use To Report Racial and Ethnic Data to the Department.* The Department will require educational institutions and other recipients to report aggregated racial and ethnic data in the following seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,
(2) American Indian or Alaska Native,
(3) Asian,
(4) Black or African American,
(5) Native Hawaiian or Other Pacific Islander,
(6) White, and
(7) Two or more races.

The definitions in the 1997 Standards will be used for each category. (*See* the discussion in Part III.A of this notice.)

The Department requires aggregate reports to use these seven aggregate categories for several reasons. Reporting these seven aggregate categories allows an appropriate balance of racial and ethnic data reporting that reflects the growing diversity of our Nation while minimizing the implementation and reporting burden placed on educational institutions and other recipients. The growing diversity is illustrated by the fact that in the 2000 Census, children and youth reported being of more than one race at more than twice the rate of adults.[13]

Finally, this approach provides for reporting the race and ethnicity of individuals in a manner that permits effective analysis of data by agencies that are responsible for civil rights monitoring and enforcement. In those instances in which more detailed information is needed by civil rights monitoring and enforcement agencies or other offices in the Department about individuals in the "two or more races" category, educational institutions and other recipients will be contacted directly for more detailed information about the individuals.

The Department's aggregate reporting categories do not separately identify the race of Hispanic/Latino. The Department's final guidance reflects its assessment that the inclusion of individuals who are Hispanic/Latino of any race in one category is appropriate in light of both the implementation

[13] For individuals 18 and over, 1.9 percent (3,969,342 in the 2000 Census) of individuals reported more than one race; while 4 percent (2,856,886) of individuals under 18 reported more than one race. *See* The Two or More Races Population.

burden and cost that these changes will place on educational institutions and other recipients and the Department's need to adopt an approach that provides the Department sufficient information to fulfill its various functions. If the Department required the reporting of the same racial categories for individuals who are Hispanic/Latino as for individuals who are non-Hispanic/Latino, six additional aggregate categories would be reported to the Department.

The cost and burden of these six additional categories would be substantial because each racial and ethnic category is often cross tabulated with other relevant information, such as the individual's sex, disability category, or educational placement, thereby multiplying the number of categories in which information must be reported. The Department has determined that it can effectively fulfill its responsibilities that involve racial and ethnic information if individuals who are Hispanic/Latino of any race are reported in one category. The Department notes that its approach not to separately aggregate individuals who are Hispanic/Latino by race is consistent with the final implementation plan of the EEOC.

Finally, the Department's requirement for reporting individuals who are Hispanic/Latino as a single category without also disaggregating the Hispanic/Latino category by race is different from the Department's collection requirements discussed in Part IV.5 of this notice, which requires educational institutions and other recipients to maintain information on the racial identification of Hispanics/Latinos. As discussed above, the Department will require educational institutions and other recipients to keep the original individual responses using the two-part question from staff and students for the length of time indicated in the instructions to the collection. If the Department determines that additional information will be needed to perform its functions effectively in a specific instance, the Department will request this additional information from educational institutions and other recipients.

The EEOC published a notice in November 2005 that provided for the use of seven categories to collect racial and ethnic data from private employers. These seven categories are:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

It is the Department's understanding that EEOC uses these seven categories to collect racial and ethnic data from LEAs, SEAs, and other educational institutions and other recipients about their employees. The adoption of seven categories for the Department collections would mean that the Department and EEOC would collect the same categories of racial and ethnic data from educational institutions and other recipients.

2. *Reporting on Individuals Who Do Not Self-Identify a Race or Ethnicity.* Some individuals will refuse to self-identify their race and/or their ethnicity. The Department currently has a different approach for how educational institutions and other recipients may handle such respondents at the elementary and secondary level as compared with the postsecondary level and with adults served under the RSA programs. Currently, elementary and secondary institutions must use observer identification if a student (through his or her parents or guardians) does not self-identify a race, and postsecondary institutions also may use observer identification. In addition, since 1990, postsecondary institutions have been permitted to report aggregate information on students or staff members who do not identify a race for the IPEDS in a "race unknown" category. Similarly, RSA recipients have been permitted to report aggregate information on their clients and staff using a "race unknown" category when clients or staff do not identify a race.

The Department continues its current practice for handling missing data.[14] Elementary and secondary institutions and other recipients are required to use observer identification when a respondent, typically a student's parent or guardian, leaves blank or refuses to self-identify the student's race and/or ethnicity. The Department will not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of racial and ethnic data. IPEDS will continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly, RSA will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. The "race and/or ethnicity unknown" category will not appear on collection forms provided to postsecondary students and staff or RSA recipients' clients and staff.

C. *Multiple Race Responses under the No Child Left Behind Act of 2001.* The creation of a multiple race aggregation category has implications for several requirements under the ESEA as reauthorized by NCLB regarding race and ethnicity. First, States, school districts, and schools are held accountable for making AYP based, among other factors, on the percent of students proficient in reading/language arts and mathematics in each of the major racial and ethnic groups of students.[15] Neither ESEA nor the ESEA regulations define what a "major" racial or ethnic group is. States have this responsibility and the Department checks to ensure that States carry it out.

Second, each State and school district that receives ESEA Title I, Part A funds must issue a report card that includes information on student achievement at each proficiency level on the State assessment, disaggregated by race and ethnicity, among other factors, at the State, school district, and school levels.[16] The same racial and ethnic groups that are used to determine AYP are typically the groups reported in State report cards.[17]

Finally, the creation of a "two or more races" category will affect two provisions that require comparisons to prior years' data. State report cards must report the most recent two-year trend in student achievement by racial and ethnic group.[18] In addition, to take advantage of the "safe harbor" provision (where a school or school district can be considered to have made AYP if the percent of students who are not proficient decreased by at least 10 percent from the previous year), a State must compare a group's current assessment data to the prior year's data, and must examine the group's performance on the State's additional indicator.[19]

States will continue to have discretion in determining what racial and ethnic groups will be deemed "major" for purposes of fulfilling these ESEA requirements. States vary substantially in the number and distribution of

[14] The Department continues to include a "race unknown" category in IPEDS because the experience of the National Center for Education Statistics has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences.

[15] 20 U.S.C. 6311(b)(2)(B) and 6311(b)(2)(C)(v)(II)(bb); 34 CFR 200.13.

[16] 20 U.S.C. 6311(h)(1) and (2).

[17] 20 U.S.C. 6311(h)(1)(C)(i).

[18] 20 U.S.C. 6311(h)(1)(C)(iv).

[19] 20 U.S.C. 6311(b)(2)(I)(i); 34 CFR 200.20(b).

multiple race individuals and are in the best position to decide how these requirements should be applied to their populations. States implementing this new guidance will not necessarily be changing the racial and ethnic categories used for AYP purposes. If a State makes changes to the racial and ethnic categories it will use under the ESEA, the State must submit an amendment to its Consolidated State Accountability Workbook to the Department.

D. *Bridging Data to Prior Years' Data.* States, educational institutions, and other recipients also may propose to "bridge" the "two or more races" category into single race categories or the new single race categories into the previous single race categories. Bridging involves adopting a method for being able to link the new data collected using the two-part question with data collected before the publication of this guidance by the Department. If States, educational institutions, and other recipients do bridge data, the bridging method should be documented and available for the Department to review, if necessary.

One method is to redistribute the new data collected under this guidance using the new racial and ethnic categories and relate them back to the racial and ethnic categories used before the publication of this guidance. For example, if a State's new data collection results in 200 students falling in the "two or more races" category at the same time that there is a combined drop in the number in the two single race categories of Black or African American students and White students, the State can adopt a method to link the 200 students in the "two or more races" category to the previously used Black and White categories.

Another method is assigning a proportion of the "two or more races" respondents into the new five single-race categories. If educational institutions or other recipients choose to bridge, they may use one of several bridging techniques. For example, they may select one of the bridging techniques in OMB's Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.[20] Educational institutions and other recipients also may choose to use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.[21] If a bridging technique is adopted, the same bridging technique must be used when reporting data throughout the educational institution or other recipient. For example, the same bridging technique should be used by the entire State for the purposes of NCLB.

V. OMB Guidance on Aggregation and Allocation of Multiple Race Responses for Use in Civil Rights Monitoring and Enforcement

OMB issued guidance in March 2000 for how Federal agencies will aggregate and allocate multiple race data for civil rights monitoring and enforcement. The guidance was issued to ensure that, as the 1997 Standards are implemented, Federal agencies maintain their "ability to monitor compliance with laws that offer protections for those who historically have experienced discrimination." Furthermore, OMB sought to ensure consistency across Federal agencies and to minimize the reporting burden for institutions such as businesses and schools that report aggregate racial and ethnic data to Federal agencies.

This OMB guidance encourages Federal agencies to collect aggregated information on a given population using the five single race categories and the four most common double race combinations. These four double race combinations are: (1) American Indian or Alaska Native *and* White, (2) Asian and White, (3) Black or African American *and* White, and (4) American Indian or Alaska Native and Black or African American. In addition to these categories, the March 2000 OMB guidance also encourages the aggregation of data on any multiple race combinations that comprise more than one percent of the population of interest to the Federal agency. OMB's guidance also encourages the reporting of all remaining multiple race data by including a "balance" category so that all data sum to 100 percent.

The OMB guidance also addresses how Federal agencies, including the Department, should allocate multiple race responses for the purpose of assessing and taking action to ensure civil rights compliance. The Department believes that requiring educational institutions and other recipients to report these four most common double race reporting combinations or information on multiple race individuals who represent more than one percent of the population on a state-by-state basis or other geographical basis would impose a substantial burden on educational institutions and other recipients without a corresponding benefit for recurring, aggregate data collections. However, in order to ensure that the Department has access to this information when needed for civil rights enforcement and other program purposes, the Department will require educational institutions and other recipients to keep the original individual responses using the two-part question for racial and ethnic data. This approach will provide the Department with access to this important information when needed. (*See* discussion in Part IV.A.5. of this notice.)

VI. The Implementation Schedule

Educational institutions and other recipients have consistently informed the Department that they will need three years from the time that the Department provided them final guidance to implement the new racial and ethnic standards.

Educational institutions and other recipients will be required to implement this guidance by the fall of 2010 in order to report data for the 2010–2011 school year. Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

Many educational institutions and other recipients have already taken significant steps to develop and implement new data systems for collecting, aggregating, and reporting racial and ethnic data. Since the mid-1990s and certainly subsequent to the October 30, 1997, issuance of the 1997 Standards, the Department has been meeting with educational agencies and organizations regarding the need for changes to the collection of racial and ethnic data to be consistent with the 1997 Standards. The opportunity for students and parents on their behalf to report their multiple race identity is vitally important. Multiple race children and their families were one of the primary impetuses for initiating the review of and modifying the standards. Also, with increasing automation of educational data systems, the Department believes that less than three

[20] *See* OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000; *http://www.whitehouse.gov/omb/inforeg/statpolicy.html#dr* (Appendix C).

[21] For civil rights monitoring and enforcement purposes, OMB issued guidance in March 2000 on how Federal agencies can allocate multiple race responses to a single race response category. Multiple race responses that combine one minority race and White, for example, are to be allocated to the minority race. OMB, Bulletin 00–02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement, (March 9, 2000): *http://www.whitehouse.gov/omb/bulletins/b00-02.html* (OMB 2000 Guidance). (See discussion in Part IV of this notice.)

years should be needed to implement data systems consistent with guidance in this area.

The Department recognizes that its delay in issuing final guidance, including its decision to delay issuing guidance until after EEOC issued its guidance in final form as discussed in Part IV of this notice, may result in implementation difficulties for some educational institutions and other recipients. The Department regrets any inconvenience that its delay in issuing guidance may cause. Nevertheless, given the vital importance of collecting racial and ethnic data under the 1997 Standards and the fact that educational institutions and other recipients are being provided a considerable amount of time to comply with the 1997 Standards, the Department expects that all educational institutions and other recipients will meet this deadline.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 15, 2007.

Margaret Spellings,

Secretary of Education.

[FR Doc. E7–20613 Filed 10–19–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stats.770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 14, 2007.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendation to the Secretary of Energy on matters related to coal and coal industry issues. The purpose of this meeting is to recognize the important contributions that the NCC has made to the Department and other Federal agencies over the past years.

Tentative Agenda:

- Call to order by Ms. Georgia Nelson, Chair.
- Remarks of Secretary of Energy, Samuel W. Bodman (invited).
- Remarks by Department of Commerce Representative.
- Presentation of guest speaker—Alex Fassbender, Chief Technology Officer & Executive Vice President, ThermoEnergy Coporation—Presentation on the development and commercial of the TIPS oxy-fuel process.
- Presentation of guest speaker—Mike DeLallo, Director/Business Development, WorleyParsons—Presentation on a sustainable model for construction and operation of coal-based electricity generation plant which will include financial, social and environmental planning.
- Council Business.
  Communication Committee Report.
  Finance Committee Report.
  Study Group Report.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 15, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–20665 Filed 10–18–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on proposed revisions to the Natural Gas Production Report, Form EIA–914.

DATES: Comments must be filed by December 18, 2007. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Rhonda Green at U.S. Department of Energy, Energy Information Administration, Reserves and Production Division, 1999 Bryan Street, Suite 1110, Dallas, Texas 75201–6801. To ensure receipt of the comments by the due date, submission by FAX 214–720–6155 or e-mail (*rhonda.green@eia.doe.gov*) is also recommended. Alternatively, Ms. Green may be contacted by telephone at 214–720–6161.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Rhonda Green at the contact information listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101, *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles,

analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Currently a sample of operators of natural gas wells report on the Form EIA–914. The sample consists of 220 of the largest natural gas operators by state or area, selected from a universe of about 8,400 operators known to have produced at least 1,000 cubic feet of natural gas per day in 2006. Using information collected on Form EIA–914, EIA estimates and disseminates timely and reliable monthly natural gas production data for Texas (onshore and offshore) and Louisiana (onshore and offshore), New Mexico, Oklahoma, Wyoming, the Federal Offshore Gulf of Mexico, Other States (onshore and offshore) with Alaska excluded, and the lower 48 States. This collection is essential to the mission of the DOE in general and the EIA in particular because of the increasing demand for natural gas in the United States and the requirement for accurate and timely natural gas production information necessary to monitor the United States natural gas supply and demand balance. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are disseminated through the *EIA Natural Gas Monthly* and *Natural Gas Annual* and EIA's Web site. Secondary publications that use the data include EIA's *Short-Term Energy Outlook, Annual Energy Outlook, Monthly Energy Review* and *Annual Energy Review.*

II. Current Actions

This notice announces EIA's intent to expand the current Form EIA–914, *Monthly Natural Gas Production Report*, in the following ways.

- Rename the survey to *Monthly Natural Gas and Crude Oil Production Report.*
- Increase the number of data elements from two to four, adding crude oil and lease condensate production data elements to the existing data elements of gross natural gas and lease gas production.
- Expand the number of areas reported from 7 to 14, adding new areas Alaska (onshore and offshore), California (onshore and offshore), Federal Offshore Pacific, Colorado, Kansas, Montana, and North Dakota to the current areas which are the Federal Offshore Gulf of Mexico, Louisiana (onshore and offshore), New Mexico, Oklahoma, Texas (onshore and offshore), Wyoming, and Other States (remaining States, including their State Offshore).

The current survey sampling procedures will be modified to accommodate the new areas and two new data elements, but will remain similar to the existing methodology. The current survey was authorized to sample 350 natural gas operators, but now only a sample of 220 natural gas operators (from a universe of 8,400) is needed to provide sufficient coverage. For the expanded survey, there is a universe of about 11,300 crude oil well operators with each operator producing at least 1 barrel per day in 2006. However, there are major sampling efficiencies available to the expanded survey because most of the natural gas operators also produce crude oil and many of the large natural gas operators are also large crude oil producers. Only 130 of the largest oil and gas operators have to be added to the current sample of 220 natural gas operators to ensure sufficient coverage of natural gas, crude oil, and lease condensate for high quality production estimates in the 14 geographic areas. Public reporting burden for this collection is estimated at 4 hour per respondent per month (this reflects a 1 hour increase from the estimated burden for reporting natural gas production only on the current Form EIA–914). The estimated burden reflects the total time necessary for the average respondent to provide the requested information.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. In providing comments, please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated at 4 hour per respondent per month (this reflects a 1 hour increase from the estimated burden for reporting natural gas production only on the current Form EIA–914). The estimated burden reflects the total time necessary for the average respondent to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501, *et seq.*).

Issued in Washington, DC October 11, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E7–20682 Filed 10–18–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 12, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–3–000.

Applicants: Fenton Power Partners I, LLC.

Description: Fenton Power Partners I, LLC submits an application for Disposition of Jurisdictional Facilities.

Filed Date: 10/09/2007.

Accession Number: 20071011–0187.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Docket Numbers: EC08–4–000.

Applicants: Meridian White Creek, LLC; Lehman White Creek Wind Holdings LLC; Halsey Street Investments LLC; Summit Power WC Wind, LLC; White Creek Wind I, LLC.

Description: White Creek Wind I, LLC, et al submits an application for Disposition of Jurisdictional Facilities.

Filed Date: 10/09/2007.

Accession Number: 20071011–0189.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Docket Numbers: EC08–5–000.

Applicants: BBPOP Wind Equity LLC; Babcock & Brown Cedar Creek LLC; Babcock & Brown Wind Partners US LLC.

Description: BBPOPO Wind Equity LLC and Babcock & Brown Cedar Creek, LLC submits an application requesting authorizations for transfers.

Filed Date: 10/09/2007.

Accession Number: 20071011–0191.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–1–000.

Applicants: Reliant Energy Mandalay, Inc.

Description: Reliant Energy Mandalay, Inc submits its Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/04/2007.

Accession Number: 20071009–0099.

Comment Date: 5 p.m. Eastern Time on Thursday, October 25, 2007.

Docket Numbers: EG08–3–000.

Applicants: Forked River Power LLC.

Description: Exempt Wholesale Generator Notice of Self Certification of Forked River Power LLC.

Filed Date: 10/09/2007.

Accession Number: 20071009–5017.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–719–018; ER97–2801–019; ER99–2156–012.

Applicants: MidAmerican Energy Company; PacifiCorp; Cordova Energy Company LLC.

Description: PacifiCorp et al submits a letter as Exhibit 1, a substitution page to the 8/27/07 Revised Tariff reflecting the striking of the "Change in Status," paragraph etc.

Filed Date: 10/09/2007.

Accession Number: 20071011–0030.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER96–2585–006.

Applicants: Niagara Mohawk Power Corporation.

Description: National Grid USA submits a compliance filing modifying market-based rate tariffs for Niagara Mohawk Power Corp.

Filed Date: 09/21/2007.

Accession Number: 20070925–0191.

Comment Date: 5 p.m. Eastern Time on Friday, October 19, 2007.

Docket Numbers: ER98–2491–012.

Applicants: ConEdison Energy.

Description: Consolidated Edison Energy, Inc submits amendments to its market based rate tariff.

Filed Date: 10/10/2007.

Accession Number: 20071011–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: ER04–449–016.

Applicants: New York Independent System Operator, Inc.; New York Transmission Owners.

Description: Consensus Deliverability Plan of the New York Independent System Operator, Inc. and the New York Transmission Owners under.

Filed Date: 10/05/2007.

Accession Number: 20071005–5135.

Comment Date: 5 p.m. Eastern Time on Friday, October 26, 2007.

Docket Numbers: ER04–1255–002.

Applicants: New England Power Pool; ISO New England Inc.

Description: ISO New England Inc submits compliance report on the status of the Day-Ahead Load Response Program and on overall efforts to integrate Demand Resources into the energy, reserves and capacity markets in New England.

Filed Date: 08/31/2007.

Accession Number: 20070831–4026.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Docket Numbers: ER06–1346–002.

Applicants: White Creek Wind I, LLC.

Description: White Creek Wind I LLC submits a revised First Revised Sheet 2 of its FERC Electric Tariff, Original Volume 1.

Filed Date: 10/05/2007.

Accession Number: 20071011–0031.

Comment Date: 5 p.m. Eastern Time on Friday, October 26, 2007.

Docket Numbers: ER06–1399–004.

Applicants: Sunbury Generation LP.

Description: Sunbury Generation LP submits a notice of change in status.

Filed Date: 10/09/2007.

Accession Number: 20071011–0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER06–1474–004.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits its compliance filing.

Filed Date: 10/09/2007.

Accession Number: 20071011–0205.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER07–1142–001.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits revised sheets to the APS Open Access Transmission Tariff.

Filed Date: 10/09/2007.

Accession Number: 20071011–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER07–1171–002.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits its responses to FERC's requests for information contained in the September 6 Letter.

Filed Date: 10/09/2007.

Accession Number: 20071011–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–21–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits this compliance filing proposing three rate changes to its Transmission Owner Tariff, FERC Electric Tariff, Sixth Revised Volume 5.

Filed Date: 10/04/2007.

Accession Number: 20071011–0186.

Comment Date: 5 p.m. Eastern Time on Thursday, October 25, 2007.

Docket Numbers: ER08–32–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc, on behalf of, Entergy Arkansas Inc submits its Third Revised Service Agreement 216 and Third Revised and Amended Interconnection and Operating Agreement.

Filed Date: 10/09/2007.

Accession Number: 20071011–0212.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–33–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a Notice of Cancellation of the Agreement with the City of Breda, Iowa designated as Service Agreement 12 under FERC Electric Tariff Original Volume 7.

Filed Date: 10/09/2007.

Accession Number: 20071011–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–34–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a Notice of Cancellation of the Agreement with the City of Wall Lake, Iowa designated as Service Agreement 13, FERC Electric Tariff Original Volume 7.

Filed Date: 10/09/2007.

Accession Number: 20071011–0210.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–35–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits an amended Electric Transmission Interconnection Agreement with Corn Belt Power Cooperative dated 9/28/07.

Filed Date: 10/09/2007.

Accession Number: 20071011–0209.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–36–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Co submits revisions to its OATT, Secom Revised Volume 3.

Filed Date: 10/09/2007.

Accession Number: 20071011–0196.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: ER08–37–000.

Applicants: Xcel Energy Services, Inc.

Description: Xcel Energy Services Inc agent for Northern States Power Co submits Market Interface Integration Services Agreement with Tantanka Wind Power LLC.

Filed Date: 10/09/2007.

Accession Number: 20071011–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–2–000.

Applicants: Southern Power Company.

Description: Form 523—Request for Permission to Issue Securities of Southern Power Company.

Filed Date: 10/04/2007.

Accession Number: 20071004–5016.

Comment Date: 5 p.m. Eastern Time on Thursday, October 25, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–20622 Filed 10–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

October 12, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–42–002.

Applicants: Southern Company Services, Inc.

Description: Compliance Filing of Southern Company to the Commission's Order Rejecting Southern Company's CBM Filing.

Filed Date: 10/11/2007.

Accession Number: 20071011–5068.

Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–3–000.

Applicants: Southern Indiana Gas and Electric Company.

Description: Order No. 890 Compliance Filing of Southern Indiana Gas and Electric Company.

Filed Date: 10/11/2007.

Accession Number: 20071011–5009.

Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–4–000.

Applicants: Midwest Stand Alone Transmission Company; Midwest ISO Transmission Owners.

Description: Order 890 Compliance of Midwest Stand Alone Transmission Companies and Midwest ISO Transmission Owners.

Filed Date: 10/11/2007.

Accession Number: 20071011–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–5–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool's Submission of Compliance Filing Revising Tariff pursuant to Order 890.
Filed Date: 10/11/2007.
Accession Number: 20071011–5050.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–6–000.
Applicants: The Empire District Electric Company.
Description: The Empire District Electric Company Compliance Filing Pursuant to Paragraph 161 of Order No. 890.
Filed Date: 10/11/2007.
Accession Number: 20071011–5076.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–7–000.
Applicants: American Electric Power Services Corp.
Description: Order No. 890 OATT of American Electric Power Services Corporation.
Filed Date: 10/11/2007.
Accession Number: 20071011–5082.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–8–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. Compliance Filing Pursuant to Paragraph 161 of Order No. 890.
Filed Date: 10/11/2007.
Accession Number: 20071011–5077.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–9–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. FPA Section 206 Filing with Non-Rate Terms and Conditions.
Filed Date: 10/11/2007.
Accession Number: 20071011–5087.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–10–000.
Applicants: Alliant Energy Corporate Services, Inc.; Interstate Power and Light Company.
Description: Order No. 890 Open Access Transmission Tariff of Alliant Energy Corporate Services, Inc., as Agent for Interstate Power and Light Company.
Filed Date: 10/11/2007.
Accession Number: 20071011–5088.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Docket Numbers: OA08–11–000.
Applicants: Integrys Energy Operating Companies.
Description: Order No. 890 Compliance Filing of Integrys Energy Operating Companies.
Filed Date: 10/11/2007.
Accession Number: 20071011–5096.
Comment Date: 5 p.m. Eastern Time on Thursday, November 01, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–20623 Filed 10–18–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0852; FRL–8484–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Chemical-Specific Rules, TSCA Sec. 8(a); EPA ICR No. 1198.08, OMB Control No. 2070–0067

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 19, 2007.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2006–0852 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 12, 2007 (72 FR 1509), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related

to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2006–0852, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Chemical-Specific Rules, TSCA Sec. 8(a).

ICR numbers: EPA ICR No. 1198.08, OMB Control No. 2070–0067.

ICR Status: This ICR is scheduled to expire on October 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of the EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, by-products of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their use. This collection addresses the above information requirements.

Responses to the collection of information are mandatory (see 40 CFR Part 704). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 68.8 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process or import, or propose to manufacture, process or import, chemical substances and mixtures.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated No. of Respondents: 4

Estimated Total Annual Burden on Respondents: 275 hours.

Estimated Total Annual Costs: $14,080.

Changes in Burden Estimates: There is no change in the total estimated respondent burden from that currently in the OMB inventory.

Dated: October 12, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20653 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0853; FRL–8485–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping for Asbestos Abatement Worker Protection (Renewal); EPA ICR No. 1246.10, OMB Control No. 2070–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the

information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 19, 2007.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2006–0853 to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 1, 2007 (72 FR 4705), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2006–0853, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Reporting and Recordkeeping for Asbestos Abatement Worker Protection (Renewal).

ICR Numbers: EPA ICR No. 1246.10, OMB Control No. 2070–0072.

ICR Status: This ICR is scheduled to expire on October 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have State plans approved by the Occupational Safety and Health Administration (OSHA). The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos. Specifically the rule requires State and local governments to monitor employee exposure to asbestos, take action to reduce exposure to asbestos, monitor employee health and train employees about asbestos hazards.

The rule includes a number of information reporting and recordkeeping requirements. State and local government agencies are required to provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule. This request addresses these reporting and recordkeeping requirements.

Responses to the collection of information are mandatory (see 40 CFR 763 Subpart G). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.32 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are state and local government employers in 26 states, the District of Columbia, and certain U.S. Territories that have employees engaged in asbestos-related construction, custodial and brake and clutch repair activities without OSHA-approved State plans.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 50.

Estimated No. of Respondents: 25,312.

Estimated Total Annual Burden on Respondents: 402,749 hours.

Estimated Total Annual Costs: $14,980,583.

Changes in Burden Estimates: This request reflects a net decrease of 9,494 hours (from 412,243 hours to 402,749 hours) in the total estimated respondent burden from that currently in the OMB inventory. This net decrease principally reflects EPA's correction of certain training burdens that results from correctly annualizing the training requirement over five years rather than over a three-year period. The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: October 15, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20663 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6692–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070261, ERP No. D–FHW–E40814–KY, I–65 to US 31 W Access Improvement Project, To Meet the Existing and Future Transportation Demand, in northeast Bowling Green, Warren County, KY.

Summary: EPA expressed environmental concerns about the impacts to groundwater and karst topography, as well as an unavoidable number of sinkholes that will be directly and indirectly impacted by the project. EPA is also concerned that the preferred alternative would also result in indirect adverse effects on two historic sites. Rating EC1.

EIS No. 20070322, ERP No. D–NPS–K61167–AZ, Saguaro National Park General Management Plan, Implementation, Rincon Mountain District and Tucson Mountain District, Pima County, AZ.

Summary: EPA has no objections to this project. Rating LO.

EIS No. 20070356, ERP No. D–FRC–J03019–CO, High Plains Expansion Project, (Docket No. CP07–207–000) Natural Gas Pipeline Facility, Construction and Operation, U.S. Army COE 404, Weld, Adams, and Morgan Counties, CO.

Summary: EPA expressed environmental concerns about impacts to water quality, wetlands, and wildlife from proposed pipeline water crossing construction. EPA requested additional analysis of construction methods and mitigation measures in Final EIS. Rating EC2.

EIS No. 20070363, ERP No. D–COE–K28022–CA, Carryover Storage and San Vicente Dam Raise Project, Providing Additional Storage Capacity for 100,000 area feet of Water by the Year 2011, Issuance of Permits, Section 10 and 404 Permits, San Diego County, CA.

Summary: EPA expressed environmental concerns about air, water and noise impacts, and requested additional information regarding the project's "Purpose and Need" statement, proposed compensatory mitigation sites for impacts to waters of the United States, efficient use of the emergency and new carryover storage, and mitigation measures for identified adverse air and noise impacts. Rating EC2.

EIS No. 20070311, ERP No. DS–COE–J28021–CO, Rueter-Hess Reservoir Expansion Project, Enlarges Reservoir to Provide Storage of Denver Basin Groundwater for Meeting Peak Municipal Water Supply, U.S. Army COE Section 404 Permit, Town of Parker, Douglas County, CO.

Summary: EPA expressed environmental concerns about the lack of information regarding future water supplies, and impacts to aquatic resources at Cherry Creek and Cherry Creek Reservoir. EPA also expressed concerns that the project's purpose and need statement was narrowly defined, thereby eliminating some potential project alternatives from consideration. Rating EC2.

Final EISs

EIS No. 20070374, ERP No. F–SFW–C64004–PR, Vieques National Wildlife Refuge Comprehensive Conservation Plan, Implementation, Vieques, PR.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070376, ERP No. F–FRC–L05237–00, Hells Canyon Hydroelectric Project, Application for Relicensing to Authorize the Continued Operation of Hydroelectric Project, Snake River, Washington and Adams Counties, ID and Wallowa and Baker Counties, OR.

Summary: EPA continues to have environmental objections due to potential violations of water quality standards and impacts to salmonids. EPA believes that additional information is needed regarding the feasibility of installing a temperature control structure, the details of the proposed Temperature Adaptive Management Plan, and information regarding the project's ability to meet all applicable water quality standards.

EIS No. 20070380, ERP No. F–AFS–K02012–NV, White Pine & Grant-Quinn Oil and Gas Leasing Project, Exploration and Development, Humboldt-Toiyabe National Forest, Ely Ranger District, White Pine, Nye and Lincoln Counties, NV.

Summary: EPA continues to have environmental concerns about impacts to water quality and habitat. EPA recommended the Record of Decision commit to appropriate mitigation measures as lease stipulations.

Dated: October 16, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–20657 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6692–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 10/08/2007 Through 10/12/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070430, Draft EIS, FHW, NC. NC–119 Relocation Project, Transportation Improvement from the I–185/40 Interchange Southwest of Mebane to Existing NC–119 south of NC–1918 (Mrs. White Lane) Mebane, Right-of-Way Acquisition, Alamance County, NC, *Comment Period Ends:* 12/03/2007, *Contact:* John F. Sullivan, III, PE 919–856–4346 Ext. 122.

EIS No. 20070431, Draft EIS, NOA, 00. Snapper Grouper Fishery Amendment 15A, Proposes Management Reference Points and Rebuilding Plans for Snowy Grouper, Black Sea Bass and

Red Porgy, South Atlantic Region, *Comment Period Ends:* 12/03/2007, *Contact:* Roy E. Crabtree 727–824–5301.

EIS No. 20070432, Final EIS, FHW, LA, I–49 South Project, from Raceland to the Westbank Expressway Route U.S. 90, Funding, Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Jefferson, Lafourche, and St. Charles Parishes, LA, *Wait Period Ends:* 11/30/2007, *Contact:* Carl M. Highsmith 225–757–7615.

EIS No. 20070433, Final EIS, BIA, ID, Programmatic—Coeur d'Alene Tribe Integrated Resource Management Plan, Implementation, Coeur d'Alene Reservation and Aboriginal Territory, ID, *Wait Period Ends:* 11/19/2007. *Contact:* Tiffany Allgood 208–686–8802.

EIS No. 20070434, Final EIS, USN, GU, Kilo Wharf Extension (MILCON P–52), To Provide Adequate Berthing Facilities for Multi-Purpose Dry Cargo/Ammunition Ship (the T–AKE), Apra Harbor Naval Complex, Mariana Island, GU, *Wait Period Ends:* 11/19/2007, *Contact:* Nora Macariola-See, P.E. 808–472–1402.

Amended Notices

EIS No. 20070332, Draft EIS, BLM, OR, Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford Districts, and the Klamath Falls Resource Area of the Lakeview District, Revision of the Resource Management Plans, Implementation, OR, *Comment Period Ends:* 12/10/2007, *Contact:* Dick Prather 503–808–6627. Revision of FR Notice Published 08/10/2007: Extending Comment Period from 11/09/2007 to 12/10/2007.

Dated: October 16, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–20631 Filed 10–18–07; 8.45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–8485–1]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to review and approve three sets of recommendations: (1) NACEPT's Draft Environmental Stewardship/Cooperative Conservation Report, (2) NACEPT's Draft Comments on *EPA's 2007 Report on the Environment: Highlights of National Trends*, and (3) NACEPT's Draft Advice Letter on EPA's Role in Biofuels. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm*.

DATES: NACEPT will hold a two day open meeting on Thursday, November 8, 2007, from 8:30 a.m. to 12:30 p.m. and Friday, November 9, 2007, from 12 p.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Mandarin Oriental Hotel, 1330 Maryland Avenue, SW., Washington, DC 20024. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 564–0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–564–0243 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 10, 2007.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 07–5166 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8484–7]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Hypoxia Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public teleconference of the SAB Hypoxia Advisory Panel to discuss comments from the chartered SAB, external reviewers and the public on its public draft (August 30, 2007) "Hypoxia in the Northern Gulf of Mexico: An Update by the EPA Science Advisory Board."

DATES: The teleconference will be held on November 16, 2007 from 1–4 p.m. Eastern time.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office by telephone/voice mail at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov*. The SAB mailing address is: US EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the teleconference announced in this notice, may be found in the SAB Web Site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Hypoxia Advisory Panel will hold a public teleconference to develop a report that details advances in the state of the science regarding hypoxia in the Northern Gulf of Mexico. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA participates with other Federal agencies, states and tribes in the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. In 2001,

the Task Force released the *Action Plan for Reducing, Mitigating and Controlling Hypoxia in the Northern Gulf of Mexico* (or *Action Plan* available at: *http://www.epa.gov/msbasin/taskforce/actionplan.htm*). The *Action Plan was informed by the science described in 2000 in An Integrated Assessment of Hypoxia in the Northern Gulf of Mexico* (or *Integrated Assessment* available at *http://www.noaa.gov/products/hypox_finalfront.pdf*) developed by the National Science and Technology Council, Committee on Environment and Natural Resources. Six technical reports provided the scientific foundation for the *Integrated Assessment* and are available at: *http://www.nos.noaa.gov/products/pub_hypox.html*. Given the passage of 6 years, EPA's Office of Water has requested that the SAB develop a report that evaluates the updated science regarding the causes and extent of hypoxia in the Gulf of Mexico, as well as the scientific basis of possible management options in the Mississippi River Basin.

In response to EPA's request, the SAB Staff Office formed the SAB Hypoxia Advisory Panel. Background on the Panel formation process was provided in a **Federal Register** notice published on February 17, 2006 (71 FR 8578–8580). The SAB Hypoxia Advisory Panel met in face-to-face meetings on September 6–7, 2006 (71 FR 45543–45544), again on December 6–8, 2006 (71 FR 66329–66330), again on February 28–March 2, 2007 (72 FR 5968–5969) and again on June 13–15, 2007 (72 FR 17158–17159). Teleconferences of the full Hypoxia Advisory Panel and its three subgroups have also been published in **Federal Register** Notices (71 FR 55786–55787, 71 FR 59107, 71 FR 77743–77744, 72 FR 11359–11360 and 72 FR 35465). The Hypoxia Advisory Panel issued a draft report on August 30, 2007, posted at: *http://www.epa.gov/sab/pdf/8-30-07_hap_draft.pdf*. This report was discussed at the chartered SAB meeting on October 3, 2007.

The purpose of the November 16, 2007 teleconference is to discuss comments received from the chartered SAB, external reviewers and the public.

Availability of Teleconference Materials: Materials in support of this teleconference will be placed on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of the teleconference.

Procedures for Providing Public Input: Written Statements: The SAB Staff Office is accepting written comments on the August 30, 2007 draft hypoxia report, posted at: *http://www.epa.gov/sab/pdf/8-30-07_hap_draft.pdf*, until November 2, 2007. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, at the contact information noted above, no later than November 12, 2007, to be placed on the public speaker list for the November 16, 2007 teleconference.

Teleconference Access: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: October 11, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–20671 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–RCRA–2007–0369; FRL–8484–9]

Adequacy of California Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination of adequacy.

SUMMARY: The Environmental Protection Agency Region IX is approving a modification to California's municipal solid waste landfill (MSWLF) permit program to allow the State to issue research, development, and demonstration (RD&D) permits for new and existing MSWLF units and lateral expansions. The approved modification allows the Director of the state program to provide a variance from certain MSWLF criteria, provided that the MSWLF owner/operator demonstrates that compliance with the RD&D permit will not increase risk to human health and the environment over a standard MSWLF permit. The Director may provide a variance from existing requirements of MSWLF criteria for run-on control systems, liquids restrictions, and final cover.

DATES: This final determination is effective on October 19, 2007.

ADDRESSES: A copy of the Docket, Docket ID No. EPA–R09–RCRA–2007–0369, including public comments received, is at *http:www//regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Ueno, Waste Management Division, WST–7–, Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105; telephone number : (415) 972–3317; fax number: (415) 947–3530; e-mail address: *ueno.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information: Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria at 40 CFR 258.4 to allow for RD&D permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time. Specifically, the rule allows the Director of an approved State to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) The run-on control systems at 40 CFR 258.26; and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner. The rule also allows the Director of an approved State to issue a time-limited RD&D permit for which the owner or operator proposes to use innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a)(1) and (2), and (b)(1), provided that the owner or operator demonstrates that the alternative cover system will not contaminate groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm. An RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the total term for an RD&D permit including renewals cannot exceed twelve years.

RD&D permits are only available in states with approved MSWLF permit programs that have been modified to incorporate the RD&D permit authority. Although a state is not required to seek approval for the RD&D permit provision,

a state must obtain EPA approval before it may issue such a permit. Requirements for state program determination of adequacy and approval procedures are contained in 40 CFR Part 239.

In 1993, EPA Region IX approved the State of California's MSWLF permit program pursuant to Subtitle D of the Federal Resource Conservation and Recovery Act (RCRA). With its application, dated March 28, 2006, and revised on February 21, 2007, the State of California is seeking EPA approval for a modification to the State's existing MSWLF permit program to incorporate RD&D permits. On June 19, 2007 (72 FR 33757–33759), EPA Region IX issued a Tentative Determination proposing to approve the State's modification and providing an opportunity for public comment. The comment period closed on August 13, 2007. During the public comment period, EPA received only one comment. The commenter supported EPA's Tentative Determination and requested that EPA proceed with final approval. The commenter also provided his opinion of the environmental benefits that could be realized through the RD&D permit program.

II. EPA's Action: Final Determination

After completing a thorough review, EPA is approving California's RD&D permit program modification. California has lawfully promulgated and fully enacted regulations for the RD&D permit program, and these regulations are adequate to ensure compliance with the Federal criteria at 40 CFR 258.4. In conformance with the Federal regulations, and in addition to California-specific requirements, an owner or operator is required to maintain less than a 30-cm depth of leachate on liner and demonstrate that compliance with the RD&D permit will not increase risk to human heath and the environment over compliance with a standard MSWLF permit.

Authority: Sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, and 6949(a). Delegation 8–46. State/Tribal Permit Programs for Municipal Solid Waste Landfills.

Dated: October 10, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–20652 Filed 10–18–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 103]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States ("Ex-Im Bank") is seeking approval of the proposed information collection described below. Ex-Im Bank provides insurance for the financing of exports of goods and services. This collection allows insured parties and insurance brokers to report overdue payments from the borrower.

DATES: Written comments should be received on or before November 19, 2007 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897. Direct all requests for information, including copies of the proposed collection of information to Terry M. Faith, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3607, *Terry.M.Faith@exim.gov.*

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Titles and Form Numbers:

Export-Import Bank of the United States Report of Overdue Accounts Under Short-Term Policies, EIB 92–27.

Export-Import Bank of the United States Report of Overdue Accounts Under Medium-Term Credit Insurance Policies, EIB 92–28.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables insured parties and insurance brokers to report overdue payments from the borrower.

Affected Public: Insured parties and brokers.

	EIB 92–27	EIB 92–28
Estimated Annual Responses	396	820
Estimated Time per Response	15 minutes	15 minutes
Estimated Annual Burden	99 hours	205 hours

Frequency of Response: One form per reporting.

Dated: October 15, 2007.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 07–5167 Filed 10–18–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the following information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35): (1) Interagency Biographical and Financial Report; (2) Interagency Notice of Change in Control; (3) Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending); (4) Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing); and (5) Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

DATES: Comments must be submitted on or before December 18, 2007.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the appropriate OMB control number:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *E-mail: comments@fdic.gov.*

Include the name and number of the collection in the subject line of the message.

• *Mail:* Steven F. Hanft (202–898–3907), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Biographical and Financial Report.
OMB Number: 3064–0006.
Frequency of Response: On occasion.
Affected Public: Directors or officers of proposed or operating insured state nonmember banks.
Estimated Number of Respondents: 1,769.
Estimated Time per Response: 4 hours.
Total Annual Burden: 7,076 hours.
General Description of Collection: The Interagency Biographical and Financial Report is submitted to the FDIC by each individual director or officer of a proposed or operating financial institution applying for federal deposit insurance as a state nonmember bank. The information is used by the FDIC to evaluate the general character of bank management as required by the Federal Deposit Insurance Act.

2. *Title:* Interagency Notice of Change in Control.
OMB Number: 3064–0019.
Frequency of Response: On occasion.
Affected Public: Persons proposing to acquire ownership control of an insured state nonmember bank.
Estimated Number of Respondents: 27.
Estimated Time per Response: 30 hours.
Total Annual Burden: 810 hours.
General Description of Collection: Any person proposing to acquire control of an insured state nonmember bank must provide 60 days prior written notice of the proposed acquisition to the FDIC. The FDIC uses the information to determine whether the competence, experience, or integrity of any acquiring person, indicates that it would not be in the interest of the depositors of the bank or in the interest of the public, to permit such persons to control the bank.

3. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).
OMB Number: 3064–0082.
Frequency of Response: On occasion.
Affected Public: State nonmember banks that regularly offer or extend consumer credit.
Estimated Number of Respondents: 4,941.
Estimated Time per Response: 480 hours.
Total Annual Burden: 2,373,600 hours.
General Description of Collection: Regulation Z (12 CFR 226), issued by the Board of Governors of the Federal Reserve System, ensures adequate disclosure of the costs and terms of credit to consumers in open-end credit (revolving credit accounts) and closed-end credit (such as mortgage and installment loans).

4. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).
OMB Number: 3064–0083.
Frequency of Response: On occasion.
Affected Public: State nonmember banks that engage in consumer leasing.
Estimated Number of Respondents: 1,755.
Estimated burden per Respondent: 75 hours.
Total Annual Burden: 131,625.
General Description of Collection: Regulation M (12 CFR 213), issued by the Board of Governors of the Federal Reserve System, implements the consumer leasing provisions of the Truth in Lending Act by providing consumers with disclosures about the costs and terms of leases for personal property.

5. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).
OMB Number: 3064–0085.
Frequency of Response: On occasion.
Affected Public: State nonmember banks engaging in credit transactions.
Estimated Number of Respondents: 5,318.
Estimated Time per Response: 134.9 hours.
Total Annual Burden: 717,642 hours.
General Description of Collection: Regulation B (12 CFR 202), issued by the Board of Governors of the Federal Reserve System, prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, and requires disclosures and recordkeeping requirements to implement those prohibitions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection 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 the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 15th day of October 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–20584 Filed 10–18–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, October 25. 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2007–20: XM Satellite Radio, Inc., by counsel, John C. Keeney, Jr.

Notice of Proposed Rulemaking for Bundled Contributions.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–5209 Filed 10–17–07; 3:21 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Studies of Board Publications.

Agency form number: FR 1373a,b.

OMB control number: 7100–0301.

Frequency: FR 1373a, one or two times per year; FR 1373b, small–panel survey: five times per year; large–panel survey, three times per year.

Reporters: FR 1373a: community–based educators, key stakeholders, and other educators who have previously requested consumer education materials from the Federal Reserve; FR 1373b: current subscribers of the publications being surveyed.

Annual reporting hours: FR 1373a: survey, 300 hours; panel discussion, 68 hours.FR 1373b: small–panel, 80 hours; large–panel 300 hours.

Estimated average hours per response: FR 1373a: survey, 30 minutes; panel discussion, 90 minutes. FR 1373b: small–panel, 15 minutes; large–panel 15 minutes.

Number of respondents: FR 1373a: survey, 400; panel discussion, 45. FR 1373b: small–panel, 64; large–panel, 400.

General description of report: This information collection is voluntary. The FR 1373a study is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. § 57a(f)); the FR 1373b study is authorized pursuant to the Federal Reserve Act (12 U.S.C. § 248(i)). The specific information collected is not considered confidential.

Abstract: The Federal Reserve uses the FR 1373a to: 1) conduct periodic reviews and evaluations of the consumer education materials and 2) develop and evaluate consumer education materials under consideration for distribution. The FR 1373b data help the Federal Reserve determine if it should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, frequency, content, format, or appearance.

Action: On August 7, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 44136) requesting public comment for 60 days on the extension, without revision, of FR 1373a,b. The comment period for this notice expired on October 9, 2007. No comments were received.

2. *Report title:* Disclosure Requirements in Connection with Regulation CC (Expedited Funds Availability Act (EFAA))

Agency form number: Reg CC.

OMB control number: 7100–0235.

Frequency: Event–generated.

Reporters: State member banks and uninsured state branches and agencies of foreign banks.

Annual reporting hours: 210,882 hours.

Estimated average hours per response: Banks: Specific availability policy disclosure and initial disclosures, 1 minute; notice in specific policy disclosure, 3 minutes; notice of exceptions, 3 minutes; locations where employees accept consumer deposits, 15 minutes; annual notice of new automated teller machines (ATMs), 5 hours; ATM changes in policy, 20 hours; notice of nonpayment, 1 minute; expedited recredit for consumers, 15 minutes; expedited recredit for banks, 15 minutes; consumer awareness, 1 minute. Consumers: expedited recredit claim notice, 15 minutes.

Number of respondents: 1,105.

General description of report: This information collection is mandatory. Reg CC is authorized pursuant the EFAA, as amended, and the Check 21 Act (12 U.S.C. § 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation or possible violation of the EFAA or the Check 21 Act is noted then information regarding such violation may be kept confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5 U.S.C. § 552(b)(8).

Abstract: Regulation CC requires banks to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Action: On August 7, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 44136) requesting public comment for 60 days on the extension, without revision, of Reg CC. The comment period for this notice expired on October 9, 2007. No comments were received.

Board of Governors of the Federal Reserve System, October 16, 2007.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E7–20620 Filed 10–18–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the renewal of the generic information collection project: "Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 15, 2007 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 19, 2007.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality."

AHRQ plans to employ the latest techniques to improve its current data collections by developing new surveys, or information collection tools and methods, and by revising existing collections in anticipation of, or in response to, changes in the healthcare field, for a three-year period. The clearance request is limited to research on information collection tools and methods, and related reports and does not extend to the collection of data for public release or policy formation.

A generic clearance for this work allows AHRQ to draft and test information collection tools and methods more quickly and with greater lead time, thereby managing project time more efficiently and improving the quality of the methodological data the agency collects.

In some instances the ability to pretest/pilot-test information collection surveys, tools, and methods, in anticipation of work, or early in a project, may result in the decision not to proceed with particular survey activities. This would save both public and private resources and effectively eliminate or reduce respondent burden.

Many of the tool AHRQ develops are made available to users in the private sector. The health care environment changes rapidly and requires a quick response from the agency to provide appropriately refined tools. A generic clearance for this methodological work will facilitate the agency's timely development of information collection tools and methods suitable for use in changing conditions.

It is particularly important to refine AHRQ's tools because they have a widespread impact. These tools are frequently made available to help the private sector to improve health care quality by enabling the gathering of useful data for analysis. They are also used to provide information about health care quality to consumers and purchasers so that they can make marketplace choices to influence and improve health care quality. The current clearance will expire January 31, 2008. This is a request for a generic approval from OMB to test information collection instruments and methods over the next three years.

Methods of Collection

Participation in the testing of information collection tools and methods will be fully voluntary and non-participation will have no affect on eligibility for, or receipt of, future AHRQ health services research support or on future opportunities to participate in research or to obtain informative research results. Specific estimation procedures, when used, will be described when we notify OMB as to actual studies conducted under the clearance.

ESTIMATED ANNUAL RESPONDENT BURDEN

Type of research activity	Number of respondents	Estimated time per respondent (min)	Total burden hours
Face-to-Face Interviews	100	60	100
Field Tests (short)	2,400	20	800
Field Tests (long)	7,600	30	3,800
Lab Experiments	200	90	300
Focus Groups	100	60	100
Cognitive Interviews	100	60	100
Totals	10,500	Not Applicable	5,200

This information collection will not impose a cost burden on the respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

Expenses (equipment, overhead, printing, and support staff) will be incurred by AHRQ components as part of their normal operating budgets. No additional cost to the Federal Government is anticipated. Any deviation from these limits will be noted in reports made to OMB with respect to a particular study or studies conducted under the clearance.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information

collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 15, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5156 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and NCEH/ATSDR announce the following committee meeting:

Times and Dates:

8:30 a.m.–3:15 p.m., November 15, 2007.

8:30 a.m.–11:15 a.m., November 16, 2007.

Place: CDC, 4770 Buford Highway, Chamblee, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC, and Administrator, NCEH/ATSDR, are authorized under Section 301(42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC, and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Discussed: An update on NCEH/ATSDR's Office of the Director, update on CDC Goals and Goal Action Plans, presentation on Formaldehyde and temporary housing units, presentation on NCEH and Top Off IV Exercise, update on ATSDR Response to BSC Program Peer Review: ATSDR Site-Specific Activities, presentation on Pandemic Flu and NCEH Laboratory Science, discussion on developing a national plan for chemical safety, and discussion on the BSC organizational and operational structure: subcommittees and/or workgroups.

Agenda items are tentative and subject to change.

The deadline for notification of attendance is November 5, 2007.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, Georgia 30303. Telephone (770) 488–4461, Fax (404) 498–0622, E-mail: *smalcom@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substance and Disease Registry.

Dated: October 11, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7–20629 Filed 10–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–102, 105 and CMS–10238]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendment (CLIA) Budget Workload Reports and Supporting Regulations Contained in 42 CFR 493.1–.2001; *Use:* Information collected will be used by CMS in determining the amount of Federal Reimbursement for compliance surveys. Use of the information includes program evaluation, audit, budget formulation and budget approval; *Form Number:* CMS–102, 105 (OMB#: 0938–0599); *Frequency:* Reporting: Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 550; *Total Annual Hours:* 4,500.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Testing of Revised OASIS Instrument for Home Health Quality Measures & Data Analysis; *Use:* Medicare-certified home health agencies (HHAs) must meet the Conditions of Participation (COPs) as set forth at 42 CFR Part 484 and 488. Since 1999, the COPs have mandated that HHAs use the "Outcome and Assessment Information Set" (OASIS) data set when evaluating adult, non-maternity patients receiving skilled services. The OASIS is a patient-specific, comprehensive assessment that identifies each patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs.

Since OASIS data collection was mandated in 1999, CMS has been systematically collecting input on ways to improve the OASIS instrument and reduce the burden of the collection effort. In 2002, CMS introduced the "reduced-burden" OASIS that was a product of the Secretary's Regulatory Reform Advisory Committee to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care. Since the 2002 revision, CMS has continued to solicit input on potential refinements and enhancements of the OASIS instrument from HHAs, industry associations, consumer representatives, researchers and other stakeholders.

Abt Associates and their subcontractor UCHSC were awarded a contract by CMS in September 2006 to continue the process of refining the OASIS data set, as well as for the testing of the instrument and analysis of the impact of proposed changes. Under this contract, researchers from Abt Associates, University of Colorado Health Sciences Center (UCHSC), and Case Western Reserve University have assisted CMS in carrying out the revisions based on the input described in the previous section. Changes to the OASIS instrument include the following removal and revision of items:

- Elimination of 7 original OASIS items not required for payment, quality or risk adjustment;
- Replacement of 44 original OASIS items with items that are revised and/or simplified to respond to industry concerns by increasing clarity and user-friendliness, and/or reducing complexity and burden (e.g., removal of "prior status" assessment for all Activity of Daily Living (ADL) and Instrumental Activity of Daily Living (IADL) items).

The revised OASIS also includes the addition of the following process items to support evidence-based practices:

- A total of 7 process items to be collected only at Start of Care/Resumption of Care, 4 of which are to be asked seasonally (e.g.; flu vaccine);
- A total of 10 process items to be collected only at Follow-up, Transfer or Discharge, either seasonally or on a small subpopulation;
- A total of 13 process items to be collected at all OASIS time points, 6 of which are to be collected on a small subpopulation.

We estimate the elimination, simplification and revision of existing OASIS items will have a burden impact equivalent to the complete elimination of 19 items. Since many of the process items will be collected only on small subpopulations or during specific months of the year, we estimate the impact of the addition of these items on burden to be equivalent to the addition of 20 items. Therefore, total impact of proposed OASIS revisions, including the elimination, revision and addition of items, changes the estimated burden of the OASIS very little while incorporating process measures needed to support evidence-based practices across the post-acute care spectrum.

As a result of comments received during the 60-day comment period from the notice that published July 27, 2007 (72 FR 41328), we revised the information collection. The revisions include clarified language, corrected time point guidance, improved alignment with items in the CARE tool, improved skip patterns that allow clinicians to bypass questions not relevant to patients, and the addition of response options that allow clinicians to document patient improvement. It is the opinion of CMS that these revisions have resulted in an improved tool that addresses many of the concerns expressed by commenters, with no increase in burden. *Form Number:* CMS–10238 (OMB#: 0938–NEW); *Frequency:* Reporting: One-time; *Affected Public:* Private Sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 11; *Total Annual Responses:* 11; *Total Annual Hours:* 173.58. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *November 19, 2007.*

OMB Human Resources and Housing Branch, Attention: Katherine Astrich, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: October 11, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–20649 Filed 10–18–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities; Notice of Meeting

AGENCY: President's Committee for People With Intellectual Disabilities (PCPID).

ACTION: Notice of quarterly meeting.

DATES: Thursday, November 15, 2007, from 2 p.m.–4 p.m. EST. The meeting will be conducted via conference call and will be open to the public using the dial-in information provided below.

ADDRESSES: The conference call may be accessed on the date and time indicated by dialing 888–989–6481, passcode: PCPID.

Agenda: PCPID will meet to formulate an action plan and timeline for completion of the 2008 Report to the President.

FOR FURTHER INFORMATION CONTACT: Sally D. Atwater, Executive Director, President's Committee for People With Intellectual Disabilities, The Aerospace Center, Second Floor, West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634, fax: 202–205–9591. E-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. PCPID, by Executive Order, is responsible for evaluating the adequacy of current

practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: October 3, 2007.

Sally D. Atwater,

Executive Director, President's Committee for People With Intellectual Disabilities.

[FR Doc. E7–20617 Filed 10–18–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0079]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guide to Minimize Food Safety Hazards for Fresh-Cut Fruits and Vegetables

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guide to Minimize Food Safety Hazards for Fresh-Cut Fruits and Vegetables" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 13, 2007 (72 FR 11364), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0609. The approval expires on October 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20632 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0182]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Data Bank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0459. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Data Bank—(OMB Control Number 0910–0459)—Extension

In the **Federal Register** of March 18, 2002 (67 FR 12022), FDA issued a guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine (NLM), National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act (FDAMA) of 1997 (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease and (2) is intended to assess the effectiveness of the treatment. The guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

Senate 1789, "Best Pharmaceuticals for Children Act" (Public Law 107–109) (BPCA), established a new requirement for the Clinical Trials Data Bank mandated by section 113 of FDAMA. Information submitted to the data bank must now include "a description of whether and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children." The guidance was updated on January 27, 2004, to include a discussion of how sponsors can fulfill the BPCA requirements.

As part of the resubmission process for OMB approval, this information collection request (ICR) has been revised to include the burden associated with new requirements imposed by the Centers for Medicare and Medicaid Services (CMS). On September 19, 2000, the Health Care Financing Administration (now CMS)

implemented a Clinical Trial Policy through the National Coverage Determination process. The Clinical Trial Policy was developed in response to a June 7, 2000, executive memorandum, issued by President Clinton, requiring Medicare to pay for routine patient costs in clinical trials. The original policy suggested that a registry be established into which studies meeting the criteria for coverage under the policy would be enrolled for administrative purposes. This registry was never established.

On July 10, 2006, CMS opened a reconsideration of its national coverage determination on clinical trials. The purpose of the reconsideration is to further refine the policy to rename it the Clinical Research Policy (CRP) to address several ambiguities, including the link between the CRP and the Coverage with Evidence Development concept, and the authority to allow the agency to pay for the costs of limited investigational items. One requirement to qualify for coverage of clinical costs under the proposed policy is that the study must be enrolled in the NLM Clinical Trials Data Bank.

Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank.

Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

For the purposes of CMS, the respondents will be providers that are conducting or sponsoring clinical trials that are seeking to have the clinical costs of their studies reimbursed by Medicare.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control Number 0910–0014 until May 31, 2009, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Procedures (where and how) for the actual submission of this information to the Clinical Trials Data Bank are addressed in the guidance.

The Center for Drug Evaluation and Research (CDER) received 4,858 new protocols in 2005. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds[1] are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 4,858 protocols per year is 3,239 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Fifty percent of 3,239 protocols per year is 1,620 new protocols per year subject to mandatory reporting. The remaining 3,238 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) received 474 new protocols in 2005. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds[1] of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 474 new protocols per year is 316 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Fifty percent of 316 protocols per year is an estimated 158 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 316 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 1,620 for CDER plus 158 for CBER, or 1,778 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,332) minus the protocols subject to mandatory reporting requirements (1,778) will be subject to voluntary reporting, or 3,554 protocols.

Our total burden estimate includes multi-center studies and accounts for the quality control review of the data before it is submitted to the data bank. The number of IND amendments submitted in 2005 for protocol changes (e.g., changes in eligibility criteria) was 7,597 for CDER and 855 for CBER. The number of IND amendments submitted in 2005 for new investigators was 11,287 for CDER and 532 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (11,287 CDER and 532 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (4,858 CDER and 474 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act.

[1]Estimate obtained from a review of 2,062 protocols submitted to CDER between January 1, 2002, and September 30, 2002.

The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing INDs, consideration of the information in the previous paragraphs, and further consultation with sponsors who submit protocol information to the Clinical Trials Data Bank, FDA estimated that approximately 4.6 hours on average would be needed per response. The estimate incorporates 2.6 hours for data extraction and 2.0 hours for reformatting based on data collected from organizations currently submitting protocols to the Clinical Trials Data Bank. We considered quality control issues when developing the current burden estimates of 2.6 hours for data extraction and the 2.0 hours estimated for reformatting. Additionally, the Internet-based data entry system developed by NIH incorporates features that further decrease the sponsor's time requirements for quality control procedures. The Clinical Trials Data Bank was set up to receive protocol information transmitted electronically by sponsors. Approximately 10 percent of sponsors electronically transmit information to the Clinical Trials Data Bank. If the sponsor chooses to manually enter the protocol information, the data entry system allows it to be entered in a uniform and efficient manner primarily through pulldown menus. As sponsors' familiarity with the data entry system increases, the hourly burden will continue to decrease.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. To date, no certifications have been received. It is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 of this document reflects the estimate of this total burden.

In the **Federal Register** of May 14, 2007 (72 FR 27140), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Sites Closed	Total Responses	Hours Per Response	Total Hours
CDER (mandatory)	1,620	1,620	2,507	3,725	13,197	4.6	60,706
CBER (mandatory)	158	158	282	176	950	4.6	4,370
CDER (voluntary)	3,238	3,238	5,090	7,562	26,690	4.6	122,774
CDER (voluntary)	316	316	573	356	1,917	4.6	8,818
Total							196,668

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

CMS Burden Estimate:

The burden associated with CMS' requirements is the time and effort necessary for the provider to extract the data elements from the study protocol and reformatting and entering the information into the data bank. We estimate that approximately 745 clinical research studies will register on the NLM data bank. The number was derived from a search of the database on September 1, 2006, restricting the search by age (e.g., > 65 years of age); sponsor (e.g., NIH, industry, other federal agency, university/organization); Phase II, III, or IV; and by type of study (e.g., cancers and other neoplasms, diagnosis, and devices). The age, sponsor, and study phase was applied to each of the three separate searches by type of study. The following number of studies by study type, including trials no longer recruiting was 562 for diagnosis, 164 for cancers and other neoplasms, and 19 for devices. In determining the total number of hours requested, the CMS estimate uses the same assumptions used by FDA to estimate its total number of burden hours. Therefore, the total annual burden associated with this requirement is 27,480 hours (5,974 responses x 4.6 hours per response).

We believe the combined estimate of burden attributable to FDA and CMS requirements, 224,148 burden hours (196,668 burden hours + 27,480 burden hours) accurately reflects the total burden associated with this information collection request. We recognize that companies who are less familiar with the data entry system and the Clinical Trials Data Bank will require greater than 4.6 hours per response. However, as sponsor familiarity with the system increases, the hourly estimate will decrease.

Dated: October 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20662 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0327]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Remote Medication Management System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Remote Medication Management System." This guidance document describes a means by which remote medication management systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal**

Register, FDA is publishing a final rule to classify remote medication management systems into class II (special controls). This guidance document is being immediately implemented as the special control for remote medication management systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Class II Special Controls Guidance Document: Remote Medication Management System" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Richard Chapman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–2585.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying remote medication management systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for remote medication management systems. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the time frames established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on remote medication management systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Remote Medication Management System," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1621 to identify the guidance you are requesting.

Persons interested in obtaining a copy of the guidance may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 3, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–20635 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0365]

Draft Guidance for Industry on the Use of Mechanical Calibration of Dissolution Apparatus 1 and 2 – Current Good Manufacturing Practice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a draft guidance for industry entitled "The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2 – Current Good Manufacturing Practice (CGMP)." The draft guidance is intended to aid drug manufacturers and ancillary testing laboratories in using mechanical calibration as an alternate approach to the use of calibrator tablets in calibrating an apparatus used for dissolution testing. The guidance provides references to information on critical tolerances that should be achieved with mechanical calibration.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 17, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Albinus D'Sa, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–9044.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2 – Current Good Manufacturing Practice (CGMP)." FDA regulations require that laboratory apparatus be calibrated at suitable intervals in accordance with established written specifications (21 CFR 211.160(b)(4)). Historically, both chemical and mechanical means have been used in calibrating dissolution apparatuses. Since 1978, chemical calibration has been the predominant method of calibration, consistent with chapter 711 of the U. S. Pharmacopeia (USP), which describes the use of calibrator tablets. Chemical calibration of an apparatus is usually performed, in addition to mechanical calibration, every 6 months. Because the use of USP chemical calibration tablets can lead to variability in the dissolution measurement system, FDA is providing guidance on mechanical calibration as an alternate approach to calibrating dissolution equipment. As stated in the draft guidance, instead of using an external calibrator tablet, a firm can use an appropriately rigorous method of mechanical calibration as an alternative to ensure ongoing acceptability of the dissolution apparatus.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the use of mechanical calibration of dissolution apparatus 1 and 2 as related to CGMP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20664 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Public Health Service; Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member by published in the **Federal Register**.

The following persons will serve on the SAMHSA Performance Review Board, which is responsible for making recommendations on performance appraisal ratings, pay adjustments, and performance awards for SAMHSA's Senior Executive Service (SES) members:

Eric Broderick, D.D.S.—Chairperson.
Westley Clark, M.D., J.D., M.P.H.
Randy Grinnell.
Anna Marsh, Ph.D.
Dennis Romero, M.A.

For further information about the SAMHSA Performance Review Board, contact the Division of Management Systems, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 3–1017, Rockville, Maryland 20857, telephone (240) 276–1124 (not a toll-free number).

Dated: October 15, 2007.

Terry L. Cline,

Administrator, SAMHSA.

[FR Doc. 07–5158 Filed 10–18–07; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0006]

Commercial Fishing Industry Vessel Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) will meet in Seattle, WA, to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: CFIVSAC will meet on November 13 and 14, 2007, from 8 a.m. to 5 p.m. The meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before October 12, 2007. Written material for distribution at the meeting should reach the Coast Guard on or before November 7, 2007. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 30, 2007. Send written material with 25 copies and requests to make oral presentations to Lieutenant Commander Kenneth Vazquez, Commandant (CG–543–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://www.regulations.gov.*

ADDRESSES: CFIVSAC will meet in the Court Room on the 5th Floor (Room 514), at the Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kenneth Vazquez, Assistant to the Executive Director, by telephone at 202–372–1247, fax 202–372–1918, e-mail: *Kenneth.Vazquez@uscg.mil.*

SUPPLEMENTARY INFORMATION: Information about the CFIVSAC up to date meeting information and a listing of the past meeting minutes is available through the following World Wide Web address (i.e., Uniform Resource Locator or URL): *http://www.FishSafe.info* ("Advisory Committee") or *http://homeport.uscg.mil/mycg/portal/ep/channelView.do?channelId=-18425&channelPage=%2Fep%2Fchannel%2Fdefault.jsp&pageTypeId=13489&BV.*

CFIVSAC will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public. Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Update on past recommendations.

(3) Status report on the NPRM.

(4) WPI project.

(5) Meeting of communication subcommittee.

(6) Meeting of risk management subcommittee.

(7) Status of Legislative proposals: The House and Senate fishing vessel safety related proposals discussed in their versions of the Coast Guard authorization bills; Pending final bills outcomes.

(8) Discussions and working group sessions by the committees on long term strategies and future plans.

Procedural

The meetings are open to the public. Please note the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than October 12, 2007. Written material for distribution at the meeting should reach the Coast Guard no later than November 7, 2007. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 30, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible but no later than November 5, 2007.

Dated: October 15, 2007.

J.G. Lantz,

Director of Commercial Regulations and Standards, Assistant Commandant for Marine Safety, Security, and Stewardship.

[FR Doc. E7–20660 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–539, Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–539, Application to Extend/Change Nonimmigrant Status. OMB Control Number: 1615–0003.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 16, 2007, at 72 FR 38841. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 19, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0003 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–539. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This information collection is used to determine eligibility for the requested immigration benefit; the form will serve as a standardized request for the benefit sought and will ensure that basic information required to assess eligibility is provided by all applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 261,867 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 196,400 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main*. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: October 15, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–20614 Filed 10–18–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 11, 2007

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07–5105 Filed 10–18–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for Nosa Luta or Rota Bridled White-eye (*Zosterops rotensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Recovery Plan for the Nosa Luta or Rota Bridled White-eye (*Zosterops rotensis*). This species, which is found only on the island of Rota in the Commonwealth of the Northern Mariana Islands, was federally listed as endangered in 2004.

ADDRESSES: Copies of the recovery plan are available by request from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone: 808/792–9400). An electronic copy of the recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans*. Printed copies of the recovery plan will be available for distribution in 4 to 6 weeks.

FOR FURTHER INFORMATION CONTACT: Fred Amidon, Fish and Wildlife Biologist, at the above Pacific Islands Fish and Wildlife Office address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. In fulfillment of this requirement, the Draft Recovery Plan for the Nosa Luta or Rota Bridled White-eye (*Zosterops rotensis*) was made available for public comment from September 19 to November 20, 2006 (71 FR 54838). Information provided during the public comment period was considered in our preparation of this recovery plan, and is summarized in an appendix to the plan.

The nosa Luta, or Rota bridled white-eye, is an endemic bird of the island of Rota in the Mariana archipelago and was federally listed as endangered in 2004 (69 FR 3022). In 1999, the population was estimated to be approximately 1,000 individuals and the species' core range consisted of approximately 628 acres (254 hectares) of forest above 490 feet (150 meters) elevation. Available information indicates that habitat loss and degradation and predation by introduced rats (*Ratttus* spp.) and black drongos (Dicrurus macrocercus) may be having some impact on the nosa Luta population. Due to its restricted range and small population size, the species is also highly susceptible to random catastrophic events like typhoons and the accidental introduction of new predators like the brown treesnake (*Boiga irregularis*), and avian diseases

like west Nile virus. Therefore, recovery actions in this plan focus on protecting and enhancing forests in the species' range; determining the specific habitat requirements of the species to better manage areas for the species' conservation; assessing the impact of black drongos and rats on nosa Luta, and controlling these species as appropriate; preventing the introduction of new predators and avian diseases; and developing techniques to safeguard the species from extinction due to random catastrophic events. Due to the limited information available about the species and its threats, this recovery plan focuses on ten years of the recovery process. As additional information is learned about the species and its threats, recovery strategies and measures should be reassessed to determine the steps needed for downlisting and then delisting the species.

The primary objectives of this recovery plan are to stop further declines in the range and composition of the nosa Luta population, develop safeguards to prevent the species from going extinct, and reverse population declines to population levels estimated in 1982 (10,000 individuals). These objectives will be attained by conducting the following actions: (1) Reducing the decline of intact nosa Luta habitat to help reduce further population declines and range restrictions and increasing the amount of habitat available for sustaining an increasing nosa Luta population; (2) assessing the impact of black drongos and introduced rats on the nosa Luta population and controlling these species, as needed, to decrease their impacts on the nosa Luta; (3) preventing the brown treesnake and other threats, like West Nile virus, from becoming established on Rota to prevent further declines in the nosa Luta population; (4) evaluating the need and determining the requirements for establishing a second population of nosa Luta to prevent the species' extinction; and (5) establishing an outreach program to increase public support for conservation of the nosa Luta.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 7, 2007.

Renne Lohoefener,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–20628 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment and Receipt of Application for an Enhancement of Survival Permit Associated With the Reintroduction of Black-Footed Ferrets on Private Land in Logan County, KS

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability and receipt of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a draft Environmental Assessment (EA) for the proposed use of an Enhancement of Survival Permit (ESP) for the reintroduction of black-footed ferrets on private land in Logan County, Kansas, pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973. as amended (Act). The Service requests information, views, and opinions from the public via this notice.

DATES: Written comments on the permit application must be received by November 19, 2007.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. You also may obtain copies of the permit application and the draft EA by visiting our Web site at *http://mountain-prairie.fws.gov/species/mammals/blackfootedferret/*. All comments received from individuals become part of the official public record.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Regional Permit Coordinator (**ADDRESSES** above), telephone 303–236–4256, or Mike LeValley, Project Leader, Kansas Ecological Services Office, 2609 Anderson Avenue, Manhattan, Kansas 66502, telephone 785–539–3474, extension 105.

SUPPLEMENTARY INFORMATION: The applicant, Ecological Services, U.S. Fish and Wildlife Service, Manhattan, Kansas, TE–139523, has requested issuance of an enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Act. Our draft EA has been conducted pursuant to the National Environmental Policy Act (NEPA).

The black-footed ferret is one of the rarest mammals in North America. Formerly co-occurring across the ranges of all prairie dog species, its distribution has been greatly reduced due to disease (plague), poisoning of prairie dogs, and human-related habitat alteration. The only known current populations are those in captivity and those started through reintroduction of captive-bred individuals. Protection of this species and enhancement of its habitat on private land will benefit recovery efforts.

The primary objections of the proposed action are—(a) to experiment with reintroduction of ferrets into much smaller prairie dog colonies than has traditionally been attempted; and (b) to attempt to establish a self-sustaining population outside the known active occurrence of sylvatic plague. This action could result in the accidental taking of individual ferrets on or off the release properties, from normal agricultural activities and vehicular traffic, and the permit will cover that take. The property upon which ferrets will be reintroduced is currently used as grazing land and cropland and is bordered by private lands. At the present time, each property supports several active prairie dog colonies, which have been evaluated and determined potentially suitable for the support of ferrets. The proposed reintroduction experiment would continue for 5 years, after which it may be terminated or continued indefinitely depending upon success and cooperating landowner desires. For more information regarding specifics of the experiment, contact the Kansas Field Office (**FOR FURTHER INFORMATION CONTACT** above).

We have made the determination that the proposed activities will enhance survival and recovery of the black-footed ferret. This notice is provided pursuant to NEPA and section 10 of the Act.

The Service has evaluated the impacts of this action under the NEPA and determined that it is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(s)(C) of the NEPA. The Service has also evaluated whether the activity complies with section 7 of the Act by conducting an intra-Service section 7 consultation on the issuance of the permit. The result of the biological opinion, in combination with the above finding and

any public comments, will be used in the final analysis to determine whether or not to finalize or amend the draft EA and to issue the permit.

We will evaluate the permit application, the draft EA, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the reintroduction of the black-footed ferret. The final permit decision will be made no sooner than 30 days after the date of this notice.

Authority: The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: October 15, 2007.

Stephen Guertin,

Acting Regional Director, Denver, Colorado.

[FR Doc. E7–20669 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Coeur d'Alene Tribal Integrated Resource Management Plan, Coeur d'Alene Reservation, Idaho

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a Final Programmatic Environmental Impact Statement (FPEIS) with the U.S. Environmental Protection Agency for the proposed Coeur d'Alene Tribal Integrated Resource Management Plan (IRMP), Coeur d'Alene Reservation, Idaho, and that the FPEIS is now available to the public. The FPEIS analyzes the impacts of four alternative approaches to managing the natural, environmental and cultural resources of the Coeur d'Alene Tribe. The purpose of the proposed action, approval of the tribe's implementation of the IRMP for a period of 20 years, is to protect and sustain these resources.

DATES: The Record of Decision on the proposed action will be issued on or after November 19, 2007. Any comments on the FPEIS must arrive by November 19, 2007.

ADDRESSES: You may mail or hand deliver written comments to Superintendent, Coeur d'Alene Agency, Bureau of Indian Affairs, P.O. Box 408, 850 A Street, Plummer, Idaho 83851.

Any person wishing a copy of this FPEIS should immediately write to the Coeur d'Alene Tribe, Attention: Tiffany Allgood, P.O. Box 408, 850 A Street, Plummer, Idaho 83851, or call her at the number provided below.

FOR FURTHER INFORMATION CONTACT: Tiffany Allgood, (208) 686–8802.

SUPPLEMENTARY INFORMATION: The FPEIS analyzes the impacts of four possible alternatives for the IRMP, as follows:

Alternative A—This is the No Action Alternative. Under this alternative, there would be no change in the existing management. Current land use, recreation and resource management activities would continue using existing laws, policies, land use practices, management plans and agreements.

Alternative B—This is the preferred alternative. It would provide for the enhancement of natural and cultural resources on the reservation, while maintaining the rural character of the reservation. The reservation ecology and biodiversity would be managed to ensure their restoration and maintenance to provide for tribal subsistence and cultural uses of the resources. Under this alternative, 11,136 acres would be available for development, 76,149 acres would be managed for conservation, 661,123 acres would retain their rural character, 92,565 acres would be managed for agricultural uses and 95,558 acres would be forested.

Alternative C—This alternative emphasizes natural resource conservation, while maintaining a working landscape for agriculture and forestry where compatible. New development would be limited to designated and environmentally suitable areas to minimize resource disturbances and adverse environmental impacts. Under this alternative, 5,401 acres would be available for development, 172,502 acres would be managed for conservation values, 62,104 acres would be managed for agricultural uses and 96,569 acres would be forested.

Alternative D—This alternative would manage the Reservation to maximize growth and development where it is not in conflict with either the natural and cultural resources or existing land use designations and suitability. Under this alternative, 55,909 acres would be available for development, 9,215 acres would be managed for conservation values, 4,808 acres would maintain their rural character, 50,953 acres would be managed for recreational uses, 72,791 acres would be managed for agricultural uses and 123,634 acres would be forested.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1502.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 23, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–20683 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM220–1430 ES; NM–109924]

Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that land located in Santa Fe County, New Mexico is suitable for classification for lease or conveyance to Museum of New Mexico Board of Regents, a statutorily created body of the State of New

Mexico, under the authority of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The Museum of New Mexico plans to use the land for an official repository for the purpose of alleviating the present substandard, overcrowded collection storage conditions for archaeological collections and for meeting the need for centralized research, education, and support facilities.

DATES: Interested parties may submit comments to the BLM Taos Field Office Manager at the address below. Comments must be received by no later than *December 3, 2007.*

ADDRESSES: Address all written comments concerning this Notice to Sam DesGeorges, BLM Taos Field Office Manager, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, Realty Specialist, at the above address or (505) 758–8851.

SUPPLEMENTARY INFORMATION: In accordance with section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. 315f, the following described land has been examined and found suitable for classification for a governmental entity, public purpose—specifically a site for an official archaeological repository and centralized research, education, and support facilities; and the land is hereby classified accordingly. The land is located at:

New Mexico Principal Meridian

T. 17 N., R. 8 E.,
Sec. 35, lot 23.
The area described contains 25.29 acres, more or less, in Santa Fe County.

The Museum of New Mexico proposes to develop the lands to construct centralized research, education, and support facilities and a repository facility for the purpose of meeting a need for storage of archaeological collections. The site would be leased for a period of 25 years with option to purchase after the site is developed according to the Museum of New Mexico's Plan of Development. Conveying title to the affected public land is consistent with current BLM land use planning.

The lease or conveyance, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. The United States will reserve all minerals together with the right to prospect for, mine, and remove the minerals.

4. Those rights for a road right-of-way granted to Santa Fe County by permit No. NMNM 90125.

Additional detailed information concerning this Notice of Realty Action including environmental documents, are available for review at the address above.

Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, except for lease or conveyance under the R&PP Act.

Comments may be submitted regarding the proposed classification, lease or conveyance of the land to the Field Office Manager, BLM Taos Field Office, for a period of 45 days from the date of publication of this notice in the **Federal Register**. Only written comments will be accepted. 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.

You may submit comments regarding the suitability of the lands for a repository and research, education and support facility site. Comments on the classification are restricted to four subjects:

(1) Whether the land is physically suited for the proposal;

(2) whether the use will maximize the future use or uses of the land;

(3) whether the use is consistent with local planning and zoning; and

(4) if the use is consistent with State and Federal programs.

Comments may be submitted regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision.

The State Director will review any adverse comments. In the absence of adverse comment, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. The land will not be offered for lease or conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.5.

Dated: October 11, 2007.

Sam DesGeorges,

Field Office Manager.

[FR Doc. E7–20618 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–07–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The field notes representing the remonumentation of the Initial Point, accepted March 19, 2007, and officially filed March 19, 2007, for Group 984, Arizona.

The field notes were prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines and the subdivision of sections 35 and 36, Township 11 North, Range 2 East, accepted April 9, 2007, and officially filed April 16, 2007, for Group 897, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (2 sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of certain sections, and metes-and-bounds surveys in sections 8 and 9, Township 14 North, Range 5 East, accepted September 12, 2007, and officially filed September 14, 2007, for Group 970, Arizona.

This plat was prepared at the request of the National Park Service.

The supplemental plat of section 14, Township 21 North, Range 8 East, accepted April 17, 2007, and officially filed April 19, 2007, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the Mineral Survey No. 4383, and a portion of Mineral Survey No. 4291, and a metes-and-

bounds survey in section 30, Township 14 North, Range 10 East, accepted April 13, 2007, and officially filed April 19, 2007, for Group 1007, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of the Eighth Standard Parallel North (north boundary), a portion of the south boundary, the west boundary and the subdivisional lines and the subdivision of certain sections, Township 32 North, Range 10 East, accepted March 26, 2007, and officially filed April 3, 2007, for Group 975, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of the Eighth Standard Parallel North (north boundary), a portion of the east and west boundaries and a portion of the subdivisional lines, and the subdivision of sections 6, 7, 18 and 28, and a metes-and-bounds survey in section 28, Township 32 North, Range 11 East, accepted March 26, 2007, and officially filed April 3, 2007, for Group 969, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of a portion of the Hopi-Navajo Partition Line, Segment "D" and the survey of the south boundary, portions of the east and west boundaries and a portion of the subdivisional lines, Township 35 North, Range 18 East, accepted September 5, 2007, and officially filed September 11, 2007, for Group 1021, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of the Fifth Guide Meridian East (east boundary), the south and west boundaries, the subdivisional lines, and the subdivision of certain sections, Township 22 North, Range 20 East, accepted January 17, 2007, and officially filed January 25, 2007, for Group 980, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the Arizona-Utah State Line (north boundary), the survey of the Tenth Standard Parallel North (south boundary), the Fifth Guide Meridian East (east boundary), the west boundary, the subdivisional lines and a metes- and bounds survey of a portion of the Monument Valley Tribal Park (MVTP) boundary, Township 41 North, Range 20 East, accepted September 10, 2007, and officially filed September 14, 2007, for Group 989, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the Tenth Standard Parallel North (south boundary), Township 41 North, Range 28 East, and the survey of the south boundary, the Seventh Guide Meridian East (east boundary), and the subdivisional lines, Township 40 North, Range 28 East, accepted April 5, 2007, and officially filed April 11, 2007, for Group 988, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of the Tenth Standard Parallel North (south boundary) and the east, west and north boundaries and the survey of the subdivisional lines and metes-and-bounds surveys, Township 41 North, Range 30 East, accepted January 17, 2007, and officially filed January 25, 2007, for Group 985, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel South (south boundary) and the metes-and-bounds survey of the administrative boundary between Marine Corps Air Station, Yuma and Luke Air Force Base, Township 9 South, Range 13 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1002, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the south boundary and a metes-and-bounds survey of the administrative boundary between Marine Corps Air Station, Yuma and Luke Air Force Base, Township 10 South, Range 13 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1004, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the south boundary and a metes-and-bounds survey of the administrative boundary between Marine Corps Air Station, Yuma and Luke Air Force Base, Township 11 South, Range 13 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1005, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat (2 sheets) representing the dependent resurvey of a portion of the south boundary and the subdivisional lines and the metes-and-bounds surveys of the Barry M. Goldwater Range boundary and the administrative boundary between Marine Corps Air Station, Yuma and Luke Air Force Base, Township 8 South, Range 14 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1006, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the east boundary and the metes-and-bounds survey of the administrative boundary between Marine Corps Air Station, Yuma and Luke Air Force Base, Township 9 South, Range 14 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1003, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the south boundary, Township 11 South, Range 14 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1009, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the east boundary and a portion of the subdivisional lines, Township 8 South, Range 15 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 995, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the south boundary, Township 11 South, Range 15 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 1010, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, Township 9 South, Range 16 West, accepted September 18, 2007, and officially filed September 21, 2007, for Group 994, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the south boundary, Township 11 South, Range 16 West, accepted July 9, 2007, and officially filed July 18, 2007, for Group 1011, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and subdivision of section 17, Township 9 South, Range 17 West, accepted August 22, 2007, and officially filed August 30, 2007, for Group 993, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the east boundary, Township 12 South, Range 17 West, accepted July 9, 2007, and officially filed July 18, 2007, for Group 1012, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the east boundary, Township 13 South, Range 17 West, accepted July 9, 2007, and officially filed July 18, 2007, for Group 1013, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the east boundary, of Fractional Township 14 South, Range 17 West, accepted July 9, 2007, and officially filed July 18, 2007, for Group 1014, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 21 and 22, Township 9 South, Range 18 West, accepted August 22, 2007, and officially filed August 30, 2007, for Group 992, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 9 South, Range 19 West, accepted August 22, 2007, and officially filed August 30, 2007, for Group 991, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, Township 9 South, Range 20 West, accepted August 22, 2007, and officially filed August 30, 2007, for Group 990, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 9 South, Range 21 West, accepted August 8, 2007, and officially filed August 16, 2007, for Group 974, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 29, Township 9 South, Range 22 West, accepted August 8, 2007, and officially filed August 16, 2007, for Group 973, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of section 6, Township 10 South, Range 22 West, accepted August 8, 2007, and officially filed August 16, 2007, for Group 972, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of the west boundary, Township 11 South, Range 22 West, and the west boundary, Township 12 South, Range 22 West, accepted August 8, 2007, and officially filed August 16, 2007, for Group 971, Arizona.

This plat was prepared at the request of the United States Marine Corp.

The plat representing the dependent resurvey of portion of the subdivisional lines, Township 4 South, Range 2 East, accepted January 8, 2007, and officially filed January 18, 2007 for Group 997, Arizona.

This plat was prepared at the request of the Ak-Chin Indian Community.

The plat representing the dependent resurvey of portion of the south boundary, Township 4 South, Range 2 East, and a portion of the subdivisional lines, Township 5 South, Range 2 East, accepted January 8, 2007, and officially filed January 18, 2007 for Group 999, Arizona.

This plat was prepared at the request of the Ak-Chin Indian Community.

The plat representing the dependent resurvey of portion of the west boundary, a portion of the subdivisional lines and the subdivision of certain sections, Township 4 South, Range 3 East, accepted January 8, 2007, and officially filed January 18, 2007 for Group 998, Arizona.

This plat was prepared at the request of the Ak-Chin Indian Community.

The plat representing the dependent resurvey of portion of the west boundary, a portion of the subdivisional lines and the subdivision of sections 25, 26 and 27, Township 5 South, Range 3 East, accepted January 8, 2007, and officially filed January 18, 2007 for Group 1000, Arizona.

This plat was prepared at the request of the Ak-Chin Indian Community.

The plat representing the dependent resurvey of portion of the west boundary, a portion of the subdivisional lines, a portion of the boundaries of Tract Numbers 40, 42, 43 and 53, and the subdivision of sections 28, 29 and 30, and the subdivision of sections 15, 22 and 27, Township 5 South, Range 4 East, accepted January 8, 2007, and officially filed January 18, 2007 for Group 1001, Arizona.

This plat was prepared at the request of the Ak-Chin Indian Community.

The plat representing the dependent resurvey of portion of the south boundary and a portion of the subdivisional lines, Township 9 South, Range 4 East, accepted March 20, 2007, and officially filed March 29, 2007 for Group 979, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (2 sheets) representing the dependent resurvey of portion of the First Guide Meridian East (west boundary), a portion of the south boundary, a portion of the subdivisional lines and a portion of Mineral Survey No. 2441, Township 9 South, Range 5 East, accepted March 20, 2007, and officially filed March 29, 2007 for Group 979, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of portion of the subdivisional lines, Township 16 South, Range 8 East, accepted March 20, 2007, and officially filed March 29, 2007 for Group 976, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of portion of the west boundary and a portion of the subdivisional lines, Township 16 South, Range 9 East, accepted March 20, 2007, and officially filed March 29, 2007 for Group 977, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of portions of the Second Guide Meridian East (west boundary) and subdivisional lines, and the subdivision of section 7, Township 14 South, Range 11 East, accepted April 9, 2007, and officially filed April 16, 2007, for Group 882, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of portion of the subdivisional lines, Township 12 South, Range 12 East, accepted March 2, 2007, and officially filed March 8, 2007 for Group 1006, Arizona.

This plat was prepared at the request of the National Park Service.

The plat representing the dependent resurvey of portion of the north boundary, a portion of the subdivisional lines, the subdivision of section 4, and the metes-and-bounds and informative traverse surveys in the NW ¼ of section 4, Township 13 South, Range 12 East, accepted March 2, 2007, and officially filed March 8, 2007 for Group 1006, Arizona.

This plat was prepared at the request of the National Park Service.

The plat (2 sheets) representing the dependent resurvey of portion of Mineral Survey Numbers 4221, 4237, 4238A and 4238B, portions of Tract Numbers 37, 38 and 39, and metes-and-bounds surveys, in unsurveyed Township 11 South, Range 15 East, accepted August 21, 2007, and officially filed August 30, 2007 for Group 943, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, the subdivision of section 30, a portion of Mineral Survey Number 4221 and the metes-and-bounds surveys in section 30, Township 11 South, Range 16 East, accepted August 21, 2007, and officially filed August 29, 2007, for Group 943, Arizona.

This plat was prepared at the request of the United States Forest Service.

The supplemental plat of sections 12 and 33, Township 6 South, Range 18 East, accepted April 17, 2007, and officially filed April 19, 2007, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The supplemental plat of section 22, Township 5 South, Range 26 East, accepted April 17, 2007, and officially filed April 19, 2007, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427.

Stephen K. Hansen,

Chief Cadastral Surveyor.

[FR Doc. E7–20667 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–130–1430–EU; DB–G08–1003; IDI–8665, IDI–20345, IDI–20495]

Termination of Desert Land Entry and Carey Act Classifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Desert Land Entry and Carey Act Classifications on 120 acres of land in Owyhee County as these classifications are no longer needed. A portion of these lands will be exchanged pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Kelley Moore, BLM, Owyhee Field Office, 20 1st Avenue West, Marsing, Idaho 83639, 208–896–5917.

SUPPLEMENTARY INFORMATION: On December 5, 1984, and December 23, 1985, the lands listed below were classified as either suitable or unsuitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, *et seq.*) and the Carey Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*). The classifications on the following described lands are hereby terminated:

Serial No.	Classification	Township	Range	Section	Subdivision
IDI–8665	Non-Suitable	2 N	4 W	20	W½SE¼SE¼.
IDI–20345	Suitable	2 N	4 W	32	NE¼NE¼ (now Lot 1).
IDI–20495	Suitable	2 N	4 W	20	NW¼SE¼.
IDI–20495	Non-Suitable	2 N	4 W	29	S½NW¼SE¼ (now Lot 1).

At 9 a.m. on October 19, 2007 the Desert Land Entry and Carey Act classifications identified above will be terminated. No opening order is required as these lands have been segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act (FLPMA).

Dated: October 15, 2007.

Mark A. Lane,

Owyhee Field Manager.

[FR Doc. E7–20654 Filed 10–18–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Route 66 Corridor Preservation Program Advisory Council Renewal

AGENCY: National Park Service, Interior.

ACTION: Notice of committee renewal.

SUMMARY: This notice is published in accordance with Section 9(a) of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has formally renewed the Route 66 Corridor Preservation Program Advisory Council to provide advice and recommendations on program guidance relating to Route 6 Corridor preservation. Public Law 106–45 (16 U.S.C. 461 note), August 10, 1999, authorizes the Secretary of the Interior, acting through the National Park Service, to provide a program of technical assistance and grants that will set priorities for the preservation of the Route 66 corridor, which passes through Illinois, Missouri, Kansas, Oklahoma, Texas, New Mexico, Arizona and California. Members of the committee represent states through which Route 66 passes, non-profit Route 66 preservation entities and other interested organizations.

FOR FURTHER INFORMATION CONTACT: Michael Taylor, National Park Service, Long Distance Trails Group Office—Santa Fe, P.O. Box 728, 1100 Old Santa

Fe Trail, Santa Fe, NM 87504–0728; (505) 988–6742.

Certification

I hereby certify that the administrative establishment of the Route 66 Corridor Preservation Program Advisory Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Route 66 Corridor Preservation Act of 1999 (16 U.S.C. 461 note).

Dated: August 6, 2007.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 07–5164 Filed 10–18–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, and Draft Floodplain and Wetland Statements of Findings for BNP Petroleum Corporation's Plan of Operations To Drill and Produce the State Tract 991 #1, Dunn-McCampbell 12A, and Dunn-McCampbell 11A Wells, Padre Island National Seashore, TX

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Plan of Operations, Environmental Assessment, and draft Floodplain and Wetland Statements of Findings for a Plan of Operations to drill and produce the State Tract 991 #1, Dunn-McCampbell 12A, and Dunn-McCampbell 11A Wells in Padre Island National Seashore.

SUMMARY: Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, of a Plan of Operations submitted by BNP Petroleum Corporation, to drill and produce the State Tract 991 #1, Dunn-McCampbell 12A, and Dunn-McCampbell 11A Wells in Padre Island National Seashore, Kleberg County, Texas. Additionally, the NPS has prepared an Environmental Assessment and draft Floodplain and Wetland Statements of Findings for this proposal.

DATES: The above documents are available for public review and comment through November 14, 2007.

ADDRESSES: The Plan of Operations, Environmental Assessment, and draft Floodplain and Wetland Statements of Findings are available for public review and comment in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas 78480. The documents are also available at the Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Echols, Chief, Division of Science and Resources Management, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173, ext. 223, e-mail at *Darrell_Echols@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the Plan of Operations, Environmental Assessment, and draft Floodplain and Wetland Statements of Findings, you may mail comments to the name and address below or post comments online at *http://parkplanning.nps.gov/.* This environmental assessment will be on public review for 30 days. 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: October 10, 2007.

Joe Escoto,

Superintendent, Padre Island National Seashore.

[FR Doc. 07–5207 Filed 10–18–07; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting for the National Park Service (NPS) Subsistence Resource Commission (SRC) Program Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the National Park Service (NPS) Subsistence Resource Commission (SRC) program within the Alaska Region.

SUMMARY: The NPS announces a SRC meeting for Gates of the Arctic National Park. The purpose of this meeting is to discuss NPS subsistence management issues and continue work on subsistence hunting program recommendations. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Gates of the Arctic National Park SRC meeting will be held on Wednesday, November 7, 2007 and Thursday, November 8, 2007, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Sophie Station Hotel, Conference Room, 1717 University Avenue, Fairbanks, AK, telephone: (907) 456–3642.

FOR FURTHER INFORMATION CONTACT: Fred Andersen, Subsistence Manager, telephone: (907) 457–5752 at Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, AK 99709.

SUPPLEMENTARY INFORMATION: SRC meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the joint meeting includes the following:

1. Call to order (SRC Chair)
2. SRC Roll Call and Confirmation of Quorums
3. SRC Chair and Superintendent's Welcome and Introductions
4. Review and Approve Agenda
5. Status of SRC Membership
6. SRC Member Reports
7. Superintendent and NPS Staff Reports
8. Federal Subsistence Board Update
9. State of Alaska Board Actions Update
10. New Business
11. Agency and Public Comments
12. SRC Work Session
13. Set time and place of next SRC meeting
14. Adjournment

Dated: September 12, 2007.

Judy Gottlieb,

Associate Regional Director, Subsistence and Partnerships, Alaska Region

[FR Doc. E7–20626 Filed 10–18–07; 8:45 am]

BILLING CODE 4312–HK–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. *Power Poles, Inc.*, United States District Court for the District of Puerto Rico, Civil No. 07–1802 (FAB) (Docket 2), was lodged with the United States District Court for the District of Puerto Rico on August 30, 2007.

This proposed Consent Decree concerns a complaint filed by the United States against Power Poles, Inc., pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief and impose civil penalties against the Defendant for violating the Clean Water Act by discharging fill material without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to pay a civil penalty. In addition, the Consent Decree requires the Defendant to deposit funds into an escrow account for use as In Lieu Fee Mitigation.

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 Isabel Muñoz Acosta, Torre Chardón, Suite 1201, 350 Carlos Chardón Ave., San Juan, Puerto Rico 00918, and refer to *United States* v. *Power Poles, Inc.*, United States District Court for the District of Puerto Rico, Civil No. 07–1802 (FAB) (Docket 2).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, San Juan, Puerto Rico 00918. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Isabel Muñoz Acosta,

Assistant United States Attorney, for the District of Puerto Rico.

[FR Doc. 07–5153 Filed 10–18–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 27 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from federal and state agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index System.

Matters for discussion are expected to include:

(1) Compact council Strategic Plan.

(2) Auditing Guidelines for the Integrated Automated Fingerprint Identification System (IAFIS) Audit of Noncriminal Justice Use of Criminal History Record Information.

(3) FBI Consideration of the National Fingerprint File Program as Related to the Next Generation IAFIS Initiatives.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

DATES: The Council will meet in open session from 9 a.m. until 5 p.m., on November 7–8, 2007.

ADDRESSES: The meeting will take place at the Renaissance Las Vegas Hotel, 3400 Paradise Road, Las Vegas, Nevada, telephone (866) 352–3434.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module B3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–2539.

Dated: October 4, 2007.

Robert J. Casey,

Section Chief, Liaison, Advisory, Training and Statistics Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 07–5154 Filed 10–18–07; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,045]

Tweel Home Furnishings Newark, NJ

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2007, in response to a petition filed by a One-Stop Operator/Partner in North Carolina on behalf of workers of Tweel Home Fashions, Newark, New Jersey.

The One-Stop or state agency may only file petitions on behalf of workers employed by a firm located within its own State. Consequently, further investigation would serve no purpose, and the petition investigation is terminated.

Signed at Washington, DC, this 5th day of October 2007

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–20590 Filed 10–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be received by the Office of Standards,

Regulations, and Variances on or before November 19, 2007.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *E-Mail: Standards-Petitions@dol.gov.*
2. *Telefax:* 1–202–693–9441.
3. *Hand-Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or with proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2007–058–C.

Petitioner: Bridger Coal Company, P.O. Box 68, Point of Rocks, Wyoming 82942.

Mine: Bridger Underground Coal Mine, MSHA I.D. No. 48–01646, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 75.1902(c)(2)(i), (ii), and (iii) (Underground diesel fuel-general requirements).

Modification Request: The petitioner requests a modification of the existing standard as it pertains to temporary underground diesel fuel storage area location within: (i) 500 feet of the loading point; (ii) 500 feet of the projected loading point where equipment is being installed; or (iii) 500 feet of the loading point where equipment is being removed. The petitioner states that: (1) Due to the size of the pillars utilized at the Bridger Underground mine (80′ x 200′) for ground control purposes in the longwall gate roads, there is little room to store all of the necessary longwall components and the temporary diesel transportation unit; (2) the longwall train consisting of transformers, emulsion pumps, emulsion tanks and other required longwall components is over 180 inches long and takes up a full pillar length; (3) the crosscuts are filled with either roof supports, and/or roof support material due to the necessity of "gob isolation" stopping and supplemental roof support (can cribs, wood cuts, rok-props, etc) along the gateroads. The petitioner proposes to: (1) Store the temporary diesel transportation unit no more than 1000 feet from the section loading point; or projected loading point during equipment installation; or the last designated loading point during equipment removal; (2) equip the diesel self-propelled fuel transportation unit and the diesel-fuel storage tank with MSHA approved automatic fire suppression systems that would be installed to meet the requirements of 30 CFR 75.1911; (3) have a certified person examine the temporary diesel fuel storage area twice each shift when work is performed inby the temporary diesel fuel storage area, and conduct a pre-shift examination of the diesel fuel storage area when work is performed in the area; (4) monitor the temporary diesel fuel storage area with an automated Atmospheric Monitoring System (AMS) that will give an alarm to the responsible person on the surface if an elevated carbon monoxide level is detected; (5) equip the self-propelled fuel transportation unit with either two additional #10 fire extinguishers or one additional #20 fire extinguisher; and (6) equip the diesel fuel storage tank with either two additional #10 fire extinguishers or one additional #20 fire extinguisher. The petitioner further states that: (1) The temporary diesel fuel storage area will be located in an area where the mine roof, mine ribs, and mine floor are well rock dusted and the roof will be supported to meet the requirements of 30 CFR 75.202 and maintain the area free of extraneous combustible materials or ignition sources; and, (2) signs will be posted at each entrance of the temporary diesel fuel storage area to identify the area as a diesel fuel storage area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–059–C.

Petitioner: Mountain Coal Company, LLC, 5174 Highway 133, P.O. Box 591, Somerset, Colorado 81434.

Mine: West Elk Mine, MSHA I.D. No. 05–03672, located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.335(c) (Seal requirement).

Modification Request: The petitioner requests a modification of the existing standard to permit welding, cutting, and soldering with an arc or flame hereinafter referred to as "hot work" within 150 feet of a seal with the following stipulations: (1) Affected personnel will be trained in the requirements of this petition for modification; (2) hot work will be done under the supervision of a qualified person who will continuously test for methane with means approved by the Secretary for detecting methane, and will make a diligent search for fire during and after such operations; (3) a qualified person will examine the area that will be traveled between the hot work location and the closest seal prior to the hot work operations; (4) hot work operations will not be conducted in locations that contain 1.0 volume per centum or more of methane, and hot work area will be rock dusted or wetted prior to such operations; and (5) provide an additional 40 pounds of rock dust or one fire extinguisher that will be immediately available during such hot work operations, in addition to the requirements of 30 CFR 75.1100–2(g). The petitioner asserts that application of the existing standard would result in a diminution safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–060–C.

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Nolo Mine, MSHA I.D. No. 36–08850, located in.

Regulation Affected: 30 CFR 75.364(a) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of conducting the required weekly examination to the deepest points of penetration in the mines 2 West Extension Section. The petitioner proposes to: (1) Flood the down dip portions of the 2 West Extension section to a maximum elevation of 1020. The flooding would occur naturally as water infiltrates into part of the mine; and (2) conduct examinations along the water's edge and adjust ventilation controls during the examinations to ensure proper ventilation is maintained, at intervals not to exceed 7 days, as the water rises and/or recedes in the 2 West Extension section. The petitioner states that: (1) The flood level in the 2 West Extension section will be controlled by pumping; (2) a mine dewatering system will be installed in the adjacent 2 Right section that is connected to 2 West Extension via an inseam horizontal borehole with an 8-inch cased inside diameter located at approximately the 1005 elevation to provide water control to a minimum of 1005 foot elevation; (3) a maximum flood elevation will be controlled by monitoring the mine pool via water level sensors and during the required 30 CFR 75.364(a) weekly physical examination of the flood line or water's edge; (4) it is estimated that it takes approximately 300 days for the 2 West Extension section to flood, so if the proposed maximum flood elevation of 1020 feet is reached prior to completion of the dewatering facility, an in-pump station will be used to maintain the approved flood level; (5) flooding the section will provide a water seal for a considerable portion of the worked out area, which will eliminate the requirement to travel into the area for examinations; (6) the alternative to flooding the 2 West Extension section is to control the water by pumping which requires maintaining 6,000 +/ − feet of electrical cable, 8 distribution boxes, motor controls, a submersible pump, and other associated electrical components; and (7) pumping the water out of 2 West Extension section would require personnel to travel over a mile from an active section and routed through worked out areas to the pump installation to conduct a pre-shift examination. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by such standard.

Docket Number: M–2007–008–M.

Petitioner: Phelps Dodge Tyrone, Inc., P.O. Drawer 571, Tyrone, New Mexico 88065.

Mine: Tyrone Mine, MSHA I.D. No. 29–00159, located in Grant County, New Mexico.

Regulation Affected: 30 CFR 56.14207 (Parking procedures for unattended equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit wheel chocks to be placed in front and behind the wheel when the vehicle is parked instead of applying the mechanical parking brake. The petitioner states that the temperature drops below 32 degrees Fahrenheit during the colder months in Grant County. There exists a potential for the mechanical parking brakes to freeze and not release. If the brakes are not fully released prior to operating the vehicle, the effectiveness of the brake is reduced, eventually rendering the brake useless. The petitioner further states that the proposed alternative method would only apply to light vehicles parked on level ground during the winter months when the likelihood of the mechanical parking brake freezing is high. The petitioner asserts that application of the existing standard has the potential of compromising the safety of the miners during the colder months in New Mexico.

Docket Number: M–2007–009–M.

Petitioner: Unimin Corporation, 48 West Boscawen Street, Winchester, Virginia 22601.

Mine: Unimin Elco Plant, MSHA I.D. No. 11–01981, located in Alexander County, Illinois.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of a NIOSH-tested clothes cleaning booth process for cleaning miners' dust laden clothing. The petitioner states that: (1) Only the miners trained in the operation of the NIOSH-tested clothes cleaning booth process will be permitted to use the process; (2) the NIOSH-tested process uses controlled compressed air for the purpose of cleaning miners' dust laden clothing; (3) all miners entering the clothes cleaning booth will be required to wear full seal goggles for eye protection, ear plugs or muffs for hearing protection, and fit tested respirators with N100 filters for respiratory protection; (4) the NIOSH-tested clothes cleaning booth process will have a caution sign conspicuously posted indicating that use of half-face fit-tested respirators with N100 filters, hearing protection, and full seal eye goggles are required before entering the booth. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard, and will provide a direct reduction in exposure to respirable crystalline silica dust. The petitioner has listed additional procedures in this petition that will be used when the proposed alternative method is implemented. Persons may review a complete description of the procedures and training requirements at the MSHA address listed in this notice.

Docket Number: M–2007–010–M.

Petitioner: St. Lawrence Zinc Company, LLC, 408 Sylvia Lake Road, Gouverneur, New York 13642.

Mine: St. Lawrence Zinc Mine, MSHA I.D. No. 30–00185, located in St. Lawrence County, New York.

Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

Modification Request: The petitioner requests a modification of the existing standard to permit refuge chambers in its underground mines to be exempt from the required waterlines being piped into the refuge chambers. The petitioner proposes to store 50 gallons of potable bottled spring water in the refuge chambers. The petitioner states that: (1) The bottled water would be stored and cycled out in accordance with the suppliers' two year shelf life; (2) the storage of 50 gallons of potable water in each refuge chamber would ensure that the miners have an ample supply of potable drinking water at all times in the refuge chamber, because in a mine disaster, waterlines, pumps, and electrical systems could fail. The petitioner asserts that modification of the existing standard would in no way diminish or lessen the measure of protection afforded by the standard for the miners.

Dated: October 12, 2007.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–20650 Filed 10–18–07; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of the Board's Committees will meet on October 26–27, 2007 in the order set forth in the following schedule, with each meeting commencing shortly after

adjournment of the immediately preceding meeting.

PUBLIC OBSERVATION BY TELEPHONE: Members of the public that wish to listen to the open portions of the meetings live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-In Directions for Open Sessions

Friday, October 26, 2007

- Call toll-free number 1–877–416–4070;
- When prompted, enter the following numeric pass code: 8575458;
- When connected to the call, please "MUTE" your telephone immediately.

Saturday, October 27, 2007

- Call toll-free number 1–877–416–4704;
- When prompted, enter the following numeric pass code: 4594318;
- When connected to the call, please "MUTE" your telephone immediately.

Meeting Schedule

Friday, October 26, 2007

Time: 1:30 p.m.[1]

1. Provision for the Delivery of Legal Services Committee (Provisions Committee).
2. Board of Directors.[2]

Saturday, October 28, 2007

Time: 8:30 a.m.[1]

3. Annual Performance Reviews Committee (Performance Reviews Committee).
4. Operations & Regulations Committee.
5. Finance Committee.[3]
6. Board of Directors.

LOCATION: The Portland Regency Hotel, 20 Milk Street, Portland, Maine.

STATUS OF MEETINGS: Open, except as noted below.

Status:

October 26–27, 2007 Board of Directors Meetings—Open, except that portions of the meetings of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to take up several agenda items in executive/closed sessions. At the closed session on October 26, 2007, the Board will interview finalists for the position of LSC Inspector General, and will consider and may act on the selection of the Inspector General.

At the closed session October 27, 2007, the Board will hear a staff report on the U.S. Government Accountability Office's draft report on LSC grants management, consider and may act on the General Counsel's report on potential and pending litigation involving LSC, consider and may act on *Resolution 2007–012*, which would authorize the LSC President to receive compensation from a non-LSC source, and be briefed regarding the former LSC program in American Samoa.[4] Verbatim written transcripts of the sessions will be made. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (9)(B) and (10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(e), (g) and (h), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certifications that the closings are authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Friday, October 26, 2007

Provision for the Delivery Of Legal Services Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of July 27, 2007.
3. Staff Update on activities implementing the LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono.
4. Staff Update on Leadership Mentoring Pilot Program.
5. Panel Presentation on Recruitment and Retention in LSC programs Innovative Projects at Pine Tree Legal Assistance:
   - Hon. Frank M. Coffin Fellowship Program. *Presenters:* Charles Miller, Managing Partner, Bernstein Shur. William Plouffe, Partner, Drummon Woodsum & MacMahon.
   - Medical-Legal Partnership for Children (MLPC). *Presenters:* Ellen Lawton, Executive Director, MLPC, Boston Medical Center, Lauren A. Smith, MD, MPH, Medical Director, MLPC, Boston Medical Center, Sara Meerse, KIDS LEGAL, Pine Tree Legal Assistance.
   - Pine Tree Legal Assistance (PTLA) Retention Incentive Leave. *Presenters:* Nan Heald, Executive Director, PTLA, Thomas Kelley, Litigation Director, PTLA, Juliet Holmes-Smith, Director, Family Unit, PTLA.
6. Public comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Consider and act on whether to authorize an Executive Session of the Board of Directors to take up the items listed below, under Closed Session, and under the Closed Session heading of the agenda for the Board's meeting of Saturday, October 27, 2007.

Closed Session

3. Interview and discuss finalists for the position of LSC Inspector General.
4. Consider and act on the selection of an LSC Inspector General.
5. Consider and act on any matters relating to the hiring of LSC Inspector General.
6. Consider and act on motion to adjourn meeting.

Saturday, October 27, 2007

Performance Reviews Committee

Agenda

Open Session

1. Approval of Agenda.
2. Consider and act on a process for evaluation of the LSC President.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

Operations and Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's July 28, 2007 meeting.
3. Approval of the minutes of the Committee's September 11, 2007 meeting.

[1] Please note that all times in this notice are Eastern Standard Time.

[2] The meeting of the Board of Directors will commence on Friday, October 26th and be continued and concluded on Saturday, October 27th.

[3] It is expected that the Finance Committee will recess for lunch and will reconvene at approximately 1:30 p.m. Depending on the length of the preceding meetings, however, it is possible that the Committee's meeting could begin earlier or later than 1:30 p.m.

[4] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

4. Consider and act on initiation of a rulemaking to adopt "lesser sanctions".
a. Staff report.
b. OIG comment.
c. Public comment.
5. Staff report on an LSC corporate compliance program.
6. Staff report on the continuity of operations plan.
7. Consider and act on locality pay issues.
8. Discussion of OIG Report on IPAs.
9. Consider and act on other business.
10. Other public comment.
11. Consider and act on adjournment of meeting.

Finance Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meetings of July 28, 2007 and September 17, 2007.
3. Consider and act on FY 2007 budgetary adjustments.
—Presentation by David Richardson.
—Comments by Victor M. Fortuno.
4. Presentation on LSC's Financial Reports for the Year Ending September 30, 2007.
—Presentation by David Richardson.
5. Staff report on status of FY 2008 appropriations process.
—Presentation by John Constance.
6. Consider and act on Resolution 2007–009, Temporary Operating Budget for FY 2008.
—Presentation by David Richardson and Charles Jeffress.
7. Consider and act on Resolution 2007–010, Resolution Authorizing Basic Field Grants for FY 2008 Upon Passage of the FY 2008 Appropriations Bill.
—Comments by Charles Jeffress.
8. Consider and act on Resolution 2007–008, the LSC FY 2009 Budget Request.
9. Staff report on financial statement standards.
—Presentation by David Richardson.
—Comments by Dutch Merryman.
10. Consider and act on recommendation to the Board to establish an audit committee or assign audit committee functions to the Finance Committee.
—Comments by Victor M. Fortuno, Charles Jeffress, Dutch Merryman.
11. Consider and act on proposed amendment to LSC Act regarding Level V of the Executive Schedule and proposed resolution concerning compensation for members of the Board.
—Presentation by Charles Jeffress.
—Comments by John Constance.
12. Staff report on the selection of a new administrator for LSC's 403(b) savings plan.
—Presentation by Charles Jeffress.
13. Consider and act on Resolution 2007–011, Increase in Maximum Salary Redirection Amount for FlexAmerica Health Care Reimbursement Fund.
—Presentation by Charles Jeffress.
14. Consider and act on invitations to LSC meetings in January 2008 and September 2008.
—Presentation by Charles Jeffress.
15. Consider and act on other business.
16. Public comment.
17. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Open Session of the *Board's* meeting of July 27, 2007.
3. Approval of minutes of the Executive Session of the *Board's* meeting of July 27, 2007.
4. Approval of minutes of the Open Session of the *Board's* meeting of July 28, 2007.
5. Approval of minutes of the Executive Session of the *Board's* meeting of July 28, 2008.
6. Approval of minutes of the *Board's Telephonic* meeting of September 11, 2007.
7. *Chairman's* Report.
8. *Members'* Reports.
9. *President's* Report.
10. *Acting Inspector General's* Report.
11. Consider and act on the report of the *Committee on the Provision for the Delivery of Legal Services.*
12. Consider and act on the report of the *Finance Committee.*
13. Consider and act on the report of the *Operations & Regulations Committee.*
14. Consider and act on the report of the *Performance Reviews Committee.*
15. Consider and act on proposed protocol for Board member access to corporate records.
16. Consider and act on Board follow-up on recommendations to the Board contained in the report issued by the GAO on LSC governance.
17. Consider and act on other business.
18. Public comment.

Closed Session

19. Staff report on the Government Accountability Office's (GAO) draft report on LSC grants management.
20. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
21. Consider and act on Resolution #2007–012 authorizing receipt of non-LSC compensation by the President.
22. Briefing on former LSC program in American Samoa.
23. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: October 17, 2007.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 07–5208 Filed 10–17–07; 1:55 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 10, 2007.

TIME AND DATE: 10 a.m., Tuesday, October 23, 2007.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matters *Secretary of Labor* v. *Emerald Coal Resources, LP*, Docket No. PENN 2007–251–E, and *Secretary of Labor* v. *Cumberland Coal Resources, LP*, Docket No. PENN 2007–252–E. (Issues include whether the Administrative Law Judge erred in upholding the Secretary's decision to require that the operators' Emergency Response Plans (ERPs) contain provisions mandating that the operators provide purchase orders for rescue chambers.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300

for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 07–5191 Filed 10–17–07; 12:09 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Supplement 1 to Revision 9 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors," and Supplement 1 to Revision 2 of NUREG–1122 [and –1123], "Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized [Boiling] Water Reactors"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Supplement 1 to Revision 9 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors," and Supplement 1 to Revision 2 of NUREG–1122 [and –1123] "Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized [Boiling] Water Reactors." These NUREGs provide policy and guidance for the development, administration, and grading of examinations used for licensing operators at nuclear power plants pursuant to the Commission's regulations in 10 CFR part 55, "Operators" Licenses." NUREG–1021 also provides guidance for maintaining operators' licenses and for the NRC to conduct requalification examinations, when necessary.

These NUREGs have been revised to implement a number of clarifications and enhancements that have been identified since Revision 9 to NUREG–1021 was published in July 2004 and Revision 2 to NUREG–1122 [and –1123] was published in June 1998. A draft of each of the Supplements was issued for comment on May 22, 2007 (72 FR 28728).

A summary of the comments received regarding the draft Supplements, and the NRC staff's response to those comments is available in the NRC's Public Electronic Reading Room *(http://www.nrc.gov/reading-rm/adams.html)*, at accession number ML072600319. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents.

Supplement 1 to NUREG–1021 includes a number of minor changes that: (1) Clarify licensed operator medical requirements, including the use of prescription medications; (2) clarify the use of surrogate operators during dynamic simulator scenarios; (3) clarify the selection process for generic knowledge and ability (K/A) statements; (4) qualify the NRC review of post-examination comments; (5) provide additional guidance for maintaining an active license (watchstander proficiency) and license reactivation; and (6) conform with Supplement 1 to Revision 2 of NUREG–1122 [and –1123], which rewords and reorganizes Section 2, "Generic Knowledge and Abilities," and adds a new K/A topic for generator voltage and electric grid disturbances.

Availability: Copies of the three NUREG Supplements are being mailed to the plant or site manager at each nuclear power facility regulated by the NRC. The Supplements are also available electronically via the NRC's Public Electronic Reading Room *(http://www.nrc.gov/reading-rm/doc-collections/nuregs/)* and in the NRC's Public Document Room located at 11555 Rockville Pike, Rockville, Maryland. If you do not have electronic access to NRC documents, single copies of the Supplements are available, to the extent of supply, and may be requested by writing to the Office of Information Services, Information and Records Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

DATES: Supplement 1 to Revision 9 of NUREG–1021 and Supplement 1 to Revision 2 of NUREG–1122 [and –1123] will become effective for examinations that are confirmed 60 or more days after the date of this notice by issuance of an official corporate notification letter or at an earlier date agreed upon by the facility licensee and its NRC Regional Office. After the effective date, NRC initial operator licensing examinations are expected to be prepared and administered in accordance with the NUREG Supplements.

FOR FURTHER INFORMATION CONTACT: David S. Muller, Operator Licensing and Human Performance Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001. Telephone: (301) 415–1412; e-mail: *dsm3@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of October 2007.

For the Nuclear Regulatory Commission.

Siegfried Guenther,

Acting Chief, Operator Licensing and Human Performance Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E7–20676 Filed 10–18–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, November 15, 2007,
Thursday, December 13, 2007,
Thursday, January 17, 2008.

The meetings will start at 10 a.m. and will be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the U.S. Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the U.S. Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved,

constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5526, 1900 E Street, NW., Washington, DC 20415, (202) 606–2838.

Dated: October 15, 2007.

Charles E. Brooks,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. E7–20646 Filed 10–18–07; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56660; File No. SR–CBOE–2007–115]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Broaden the Application of Existing Transaction Fees for VIX Options to Options on All Volatility Indexes Calculated by CBOE

October 15, 2007.

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 September 27, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 4, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to broaden the application of its existing fees for transactions in CBOE Volatility Index ("VIX") options to transactions in options on all volatility indexes that are calculated by the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This rule change proposes to extend the existing fees for transactions in VIX options to options on all volatility indexes calculated by the Exchange. Currently, the established transaction fees for VIX options are: $0.20 per contract for Market-Makers, Designated Primary Market-Makers and Remote Market-Makers;[5] $0.20 per contract for member firm proprietary transactions; $0.25 per contract for manually executed broker-dealer transactions;[6] $0.45 per contract for electronically executed broker-dealer transactions (*i.e.*, broker-dealer orders that are automatically executed on the CBOE Hybrid Trading System),[7] and $0.40 per contract for public customer transactions. In addition, there is a $.04 surcharge fee currently assessed to non-public customer transactions in VIX options.[8]

The Exchange believes the rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.[9] The Exchange proposes to replace the two references to "VIX" in the Fees Schedule with the category "VOLATILITY INDEXES." The transaction fees for options on "VOLATILITY INDEXES" will apply to currently listed volatility index options and volatility index options to be listed in the future. The impetus for this rule change is the launch of options on the CBOE Nasdaq-100 Volatility Index ("VXN") and on the CBOE Russell 2000 Volatility Index ("RVX").[10]

The Exchange represents that the surcharge fee on all non-public customer transactions in options on volatility indexes is to help the Exchange recoup license fees the Exchange must pay to the respective reporting authorities for the options that the Exchange uses to calculate the volatility indexes (*e.g.*, The Nasdaq Stock Market, Inc. and The Frank Russell Company). This surcharge fee is currently assessed on non-public customer transaction options on the Standard & Poor 100 Index ("OEX" and "XEO"), options on the Standard & Poor 500 Index ("SPX") and options on the VIX.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4)[12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] This fee is set forth in the "Index Options" section at paragraph II of the Fees Schedule and is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

[6] This fee is set forth in the "Index Options" section at paragraph IV (4th bullet point) of the Fees Schedule.

[7] This fee is set forth in the "Index Options" section at paragraph IV (5th bullet point) of the Fees Schedule. Broker-dealer manual and electronic transaction fees will apply to broker-dealer orders (orders with "B" origin code), non-member market-maker orders (orders with "N" origin code) and orders from specialists in the underlying security (orders with "Y" origin code).

[8] There is also a $.04 surcharge fee assessed to non-public customers for options on the S&P 100 Index ("OEX" and "XEO") and for options on the S&P 500 Index ("SPX").

[9] Linkage order fees are inapplicable for options on CBOE's proprietary volatility indexes.

[10] The Exchange previously received Commission approval to list and trade VXN and RVX options. *See* Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (April 21, 2004) (order approving SR–CBOE–2003–40 to list and trade VXN options); *see also* Securities Exchange Act Release No. 55425 (March 8, 2007), 72 FR 12238 (March 15, 2007) (order approving SR–CBOE–2006–73 to list and trade RVX options).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

among CBOE members and other persons using its facilities.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder [14] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–115 and should be submitted on or before November 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20619 Filed 10–18–07; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 4, 2007, the date on which CBOE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56657; File No. SR–CHX–2007–09]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend the Exchange's Institutional Broker Rules To Add Provisions Relating to the Handling of Stop and Stop-Limit Orders

October 12, 2007.

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 March 21, 2007, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CHX. 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 amend its rules to add new provisions to confirm how institutional brokers should handle stop and stop-limit orders. The text of the proposed rule change is available at *http://www.chx.com/rules/proposed_rules.htm*, at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add a new provision to its institutional broker rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to confirm how institutional brokers should handle stop and stop-limit orders.[3] Under these provisions, an institutional broker could choose to, but would not be required to, accept stop or stop-limit orders.

Under this proposal, a stop order to buy (sell) would become a market order when a transaction in the security at or above (below) the stop price is reported in an effective transaction reporting plan after the order is received by an institutional broker. Similarly, stop-limit orders to buy (sell) would become limit orders when a transaction in the security at or above (below) the stop price is reported in an effective transaction reporting plan after the order is received by an institutional broker. Stop or stop-limit orders could be elected either by the price of the opening transaction on the Exchange or by the price of the opening on any other market center reporting in an effective transaction reporting plan. These proposed provisions are substantially similar to requirements set forth in the rules of other self-regulatory organizations, including New York Stock Exchange LLC ("NYSE") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")).[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act.[6] The proposed rule change is consistent with Section 6(b)(5) of the Act because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to add a new provision to its institutional broker rules to confirm how institutional brokers should handle stop and stop-limit orders.

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.

[3] Other provisions of the institutional broker rules confirm the order-handling obligations associated with market, limit, and not held orders.

[4] *See* NYSE Rule 13; NASD Rule 5120(h).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2007–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2007–09 and should be submitted on or before November 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20586 Filed 10–18–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56645; File No. SR–NASD–2005–080]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1, 2, 3 and 4 Relating to Fairness Opinions

October 11, 2007

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] on June 22, 2005, the National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")), filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to fairness opinion disclosures and procedures.

On April 4, 2006, the Commission issued a release noticing the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, which was published for comment in the **Federal Register** on

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

April 11, 2006.[3] The comment period expired on May 2, 2006. The Commission received eight comment letters in response to the proposed rule change.[4] On June 7, 2007, FINRA filed Amendment No. 4 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 4, and approves the proposed rule change as amended on an accelerated basis.

II. Background

FINRA is proposing to establish new Rule 2290 to address disclosures and procedures in connection with the issuance of fairness opinions by member firms. Fairness opinions are routinely obtained by boards of directors in corporate control transactions and address the fairness, from a financial perspective, of the consideration being offered in the transaction.

Fairness opinions may serve a variety of purposes, including as indicia of the exercise of care by the board of directors in a corporate control transaction as well as to supplement information available to shareholders and, as such, are often provided as part of proxy materials. Fairness opinions offer a view as to whether the consideration offered in a deal is within the range of what would be considered "fair," rather than offering an opinion as to whether the consideration offered is the best price that could likely be attained.

In its proposal, FINRA expressed concern that the disclosures provided in fairness opinions may not be adequate to alert shareholders as to potential conflicts of interest that may exist between the firm issuing the opinion and the parties involved in the transaction. For example, in many cases, the firm issuing the fairness opinion is also acting as an advisor to a party to the transaction. As such, there may be a contingent compensation structure dependent upon the success of the deal. There may also be other material relationships between the member firm and a party to the transaction that is the subject of the fairness opinion involving compensation that has been, or is intended to be, received. Thus, the proposed rule change would provide shareholders with certain disclosures with regard to any fairness opinion issued by a member firm if, at the time of its issuance to the board of directors, the member knows or has reason to know that the fairness opinion will be provided or described to the company's public shareholders.

Further, the proposed rule change seeks to require member firms to establish written procedures for use in issuing fairness opinions, including addressing when a member firm will employ the use of an internal committee in approving a fairness opinion. In cases where a committee is used, the member must set forth in its procedures, among other things, the process for selecting personnel to be on the fairness committee.

III. Discussion

The Commission received eight comment letters in response to the proposed rule change.[5] As discussed below, commenters generally supported the fundamental goals and objectives behind the proposed rule change, and several commenters suggested modifications or requested clarification. In response to various concerns and suggestions raised by commenters, FINRA filed Amendment No. 4 to the proposed rule change.

After careful review, the Commission finds, as discussed more fully below, that the proposed rule change is consistent with the requirements of the Exchange Act and the regulations thereunder applicable to FINRA.[6] In particular, the Commission believes that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.[7]

Section 15A(b)(6) requires that the rules of a registered national securities association 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 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. Section 15A(b)(9) requires that the rules of an association not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 3(f) of the Exchange Act directs the Commission to consider, in addition to the protection of investors, whether approval of a rule change will promote efficiency, competition, and capital formation.[8] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation.

The Commission believes that the proposed rule change provides investors with useful information in understanding the primary potential conflicts of interest faced by member firms that issue fairness opinions. The proposed rule change is tailored to require any member firm that issues a fairness opinion to include the specified disclosures only where the member firm knows or has reason to know that the fairness opinion will be provided or described to the company's public shareholders. Thus, even though an opinion may be prepared for use by the board of directors of a client of a member firm, because the fairness opinion is usually included in materials provided to public shareholders, these shareholders will now be made aware of potential conflicts of interest with regard to the existence of contingent compensation arrangements and other material relationships between the member and any party to the transaction that is the subject of the fairness opinion.

Further, new Rule 2290's procedural requirements provide safeguards to help member firms manage potential conflicts of interest in approving fairness opinions by, among other things, requiring that any fairness committee formed must include representation by persons who do not serve on the deal team to the transaction that is the subject of the fairness opinion.

A. Disclosure Regarding Compensation Contingent Upon the Successful Completion of a Transaction

New Rule 2290(a)(1) requires that when a member firm acts as a financial advisor to any party to a transaction that is the subject of a fairness opinion issued by the firm, the member must disclose if the member will receive compensation that is contingent upon the successful completion of the transaction, for rendering the fairness

[3] *See* Securities Exchange Act Release No. 53598 (April 4, 2006), 71 FR 18395 (April 11, 2006) ("Original Proposal").

[4] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Michael W. Kane, Ph.D., J.D., President and CEO, Kane & Company, Inc. (May 1, 2006); Donna M. Hitscherich, Faculty, Columbia University Graduate School of Business, New York (May 1, 2006); Gilbert E. Matthews, CFA, Chairman, Sutter Securities Incorporated (May 1, 2006); Ann Yerger, Executive Director, Council of Institutional Investors (May 1, 2006); John Faulkner, Chair, Capital Markets Committee, Securities Industry Association (May 2, 2006); Marjorie Bowen, Managing Director, National Co-Director of Fairness Opinion Practice, Houlihan Lokey Howard & Zukin Capital, Inc. (May 2, 2006); Daniel S. Sternberg, Committee Chair, Special Committee on Mergers, Acquisitions and Corporate Control Contests, The Association of the Bar of the City of New York (May 3, 2006); Michael J. Holiday, Chair, Committee on Securities Regulation, New York State Bar Association (May 11, 2006).

[5] *See supra* note 4.

[6] *See* 15 U.S.C. 19(b)(2).

[7] 15 U.S.C. 78o–3(b)(6) and (9).

[8] 15 U.S.C. 78c(f).

opinion and/or serving as an advisor. New Rule 2290(a)(2) also requires that a member firm disclose if it will receive any other significant payment or compensation that is contingent upon the successful completion of the transaction.

Commenters were generally supportive of these provisions. However, one commenter suggested that the disclosure should be quantitative, disclosing the actual amount of the contingent compensation that would be received by the member firm, rather than descriptive, disclosing only the existence of such compensation arrangement. Commenters also expressed concern regarding tracking smaller amounts of contingent compensation or other payments and suggested a threshold amount in order to make compliance more practicable. Two commenters also requested that FINRA clarify that the existence of such contingent compensation arrangement does not constitute an acknowledgement that an actual conflict of interests exists.

In FINRA's response to comments, FINRA stated that it continues to believe that it is sufficient that shareholders are aware of the existence of a contingent compensation relationship. FINRA also did not determine it appropriate to clarify in the rule text that the existence of a contingent compensation arrangement is not an acknowledgement that an actual conflict of interests exists. However, in Amendment No. 4, FINRA explained, among other things, that the proposed rule change does not presume a conflict merely because the disclosures are made. Further, in Amendment No. 4, FINRA amended the "catch-all" provision of paragraph (a)(2) regarding other payments or compensation by adding a "significant" qualifier. FINRA noted that it believes this change will ease compliance burdens.

We believe that a descriptive disclosure that alerts shareholders to the existence of a contingent compensation arrangement is sufficient to serve the basic purpose of highlighting for investors that the issuing member stands to benefit financially from the successful completion of the transaction, and therefore, that a conflict of interests may exist. We also believe that adding the "significant" qualifier strikes a proper balance. The Commission finds that the proposed rule change requiring disclosure of contingent compensation for rendering the fairness opinion and/or serving as an advisor, or of other significant payments dependent on the successful outcome of the transaction, are consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

B. Disclosure of Material Relationships Between the Member and Parties to the Transaction

New Rule 2290(a)(3) requires that member firms disclose any material relationships that existed during the past two years or material relationships that are mutually understood to be contemplated in which any compensation was received or is intended to be received as a result of the relationship between the member and any party to the transaction that is the subject of the fairness opinion.

Several commenters expressed concern that the requirement was overbroad and implied that members must breach confidential obligations or make premature disclosures of non-public information. FINRA noted that the disclosure provision of paragraph (a)(3) is largely based on Item 1015(b)(4) of the Commission's Regulation M–A and was less specific than Item 1015(b)(4) because the disclosures of "material relationships" in the proposed rule change are descriptive rather than quantitative.

In Amendment No. 4, FINRA made one modification to this provision to clarify that each of the material relationships should be identified in the fairness opinion. The Commission finds that the disclosure requirement regarding material relationships is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

C. Disclosure Regarding Independent Verification of Information That Formed a Substantial Basis for the Fairness Opinion

New Rule 2290(a)(4) requires that members disclose if any information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies that are parties to the transaction has been independently verified by the member, and if so, a description of the information or categories of information that were verified.

Paragraph (a)(4) in the Original Proposal would have required disclosure of the categories of information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction, and whether any such information has been independently verified by the member. Two commenters believed that this requirement should be deleted because it was not clear what "verify" the information meant. One commenter asserted that in most cases this information could not be verified so the disclosure of the categories of information would be meaningless for the investor. FINRA clarified in Amendment No. 4 that it did not intend to require independent verification of the information provided to the member. Rather, as noted by FINRA in Amendment No. 4, the disclosure is intended to provide a public shareholder with information concerning the extent to which information relied on by the member was verified. Upon further review, FINRA determined that disclosing the categories of information that formed a substantial basis for the fairness opinion would not provide meaningful guidance to the investor, particularly when this information is not "verified."

Accordingly, in Amendment No. 4, FINRA retained the provision requiring disclosure if any information that formed a substantial basis for the fairness opinion that was supplied by the company requesting the opinion has been verified and, if so, the requirement that the member disclose a description of the verified information or categories of this information. FINRA eliminated, however, the requirement to list each category of information when such information has not been verified. FINRA noted that when no information has been verified, a blanket statement to that effect, as is common practice today, would be sufficient. The Commission finds that the disclosure requirement regarding verification of information supplied by the company requesting the opinion that formed a substantial basis for the opinion is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

D. Disclosures Regarding Use of a Fairness Committee

New Rule 2290(a)(5) requires member disclosure of whether or not the fairness opinion was approved or issued by a fairness committee. Commenters supported the use of committees and noted that use of such committees is commonplace today. One commenter believed that the disclosure was not material and may create a misleading impression that a fairness opinion rendered by a fairness committee is substantively better than one not approved by a committee. The commenter suggested, however, that if the provision is retained, FINRA should revise the rule text to acknowledge that a fairness committee may not always be

called a "fairness committee" within a particular firm.

In Amendment No. 4, FINRA stated its belief that fairness opinions that are approved by a fairness committee that follows the procedures required by the proposed rule generally are less susceptible to conflicts and that fairness opinions should include disclosure regarding whether a fairness committee was used. Regarding the term "fairness committee," FINRA also believes that the term would include any committee or group that approves a fairness opinion in accordance with the procedural requirements of paragraph (b) regardless of whether the member calls it a "fairness committee." In addition, FINRA amended the rule language to clarify that members must specifically disclose whether or not a fairness committee approved or issued the fairness opinion. The Commission finds that the disclosure requirements regarding use of a fairness committee are consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

E. Disclosure Regarding Relative Compensation to Officers, Directors, and Employees

New Rule 2290(a)(6) requires member firms to disclose whether or not the fairness opinion expresses an opinion about the fairness of the amount or nature of the compensation from the transaction underlying the fairness opinion, to the company's officers, directors or employees, or class of such persons, relative to the compensation to the public shareholders of the company.

The Original Proposal would have required members to establish a process by which the member would evaluate the degree to which the amount and nature of the compensation from the transactions underlying the fairness opinion benefits insiders relative to the benefits to shareholders. Commenters argued that members do not possess the expertise to make this determination and that this type of determination is outside of the scope of what the member opines on in a fairness opinion. In Amendment No. 4, FINRA revised the proposed rule in response to comments, stating that it believes the disclosure in new Rule 2290(a)(6) suitably highlights to the investor the potential conflict of interests between the member issuing the fairness opinion and the party receiving the opinion by requiring disclosure whether the member did or did not take into account the amount and nature of compensation flowing to certain insiders relative to the benefits to shareholders in reaching a fairness determination.

The Commission finds that this provision is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

F. Procedures for Use of a Fairness Committee

New Rule 2290(b)(1) requires that any member issuing a fairness opinion must have written procedures for approval of a fairness opinion by the member, including: The types of transactions and the circumstances in which the member will use a fairness committee to approve or issue a fairness opinion, and in those transactions in which it uses a fairness committee: (A) The process for selecting personnel to be on the fairness committee; (B) the necessary qualifications of persons serving on the fairness committee; and (C) the process to promote a balanced review by the fairness committee, which shall include the review and approval by persons who do not serve on the deal team to the transaction.

In response to the Original Proposal, one commenter suggested requiring "written" procedures since FINRA refers to having written procedures in the rule filing but this is not indicated in the rule text itself. FINRA made the recommended change to the rule language.

In addition, two commenters recommended revising the language of paragraph (b)(1)(C) as found in the Original Proposal. The Original Proposal required procedures regarding the process to promote a balanced review by the fairness committee, which included the review and approval by persons who do not serve on or advise the deal team to the transaction. Commenters noted that persons who advise the deal team often consult with the fairness committee regarding, for instance, valuation techniques, and that this advice should not be impaired. Commenters also stated that the language in the Original Proposal implied that such consultation was not permissible and, therefore, suggested deleting the phrase "or advise."

In Amendment No. 4, FINRA stated that it believes that commenters may have misunderstood the intent of paragraph (b)(1)(C) in the Original Proposal. Nevertheless, in Amendment No. 4, FINRA deleted the language "or advise" to help alleviate confusion.

FINRA also noted in Amendment No. 4 that whether a person is considered to be part of the deal team requires an analysis of the particular facts and circumstances, and will not be determined by whether a person is included on all document distributions or participated in certain meetings, but rather will depend on the nature and substance of his or her contacts and the advice rendered to the firm. The Commission finds that this procedural requirement will help firms manage potential conflicts of interest and is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

G. Procedures Regarding Valuation Analyses

Paragraph (b)(2) of the Original Proposal would have required members to have a process to determine whether the valuation analyses used in the fairness opinion are appropriate and the member's procedures would have to state the extent to which the appropriateness of the use of such valuation analyses is determined by the type of company or transaction that is the subject of the fairness opinion. In Amendment No. 4, however, FINRA deleted this second requirement because it believes that a specific requirement addressing the detail regarding the impact of the type of company or transaction on the valuation analyses is not necessary. Thus, new Rule 2290(b)(2) only requires procedures addressing the process to determine whether the valuation analyses used in the fairness opinion are appropriate. The Commission finds that this provision is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

H. Procedures Regarding Relative Compensation to Officers, Directors, and Employees

Paragraph (b)(3) of the Original Proposal would have required members to have a process to evaluate whether the amount and nature of the compensation from the transaction underlying the fairness opinion benefiting any individual officers, directors or employees, or class of such persons, relative to the benefits to shareholders of the company, was a factor in reaching a fairness determination. Several commenters expressed concern regarding this proposed provision. Commenters argued that the proposal implied that members must make a judgment as to the appropriateness of compensation to insiders relative to the compensation to be paid to shareholders. They noted that members issuing fairness opinions do not have the expertise to evaluate executive compensation matters and that the appropriateness of management compensation is beyond the scope of a fairness opinion and that an insider's compensation in general is not a factor in rendering a fairness opinion and,

therefore, this provision does not make sense in terms of how members perform a fairness opinion evaluation.

In Amendment No. 4, FINRA stated that the procedure required by the Original Proposal was intended to guard against potential conflicts of interest between the member issuing the fairness opinion and those insiders who may stand to gain an economic benefit from the transaction, and who generally are in a position to make determinations about which member will perform the fairness opinion evaluation. In response to comments, however, in Amendment No. 4 FINRA deleted the procedures in paragraph (b)(3) of the Original Proposal and added the disclosure requirements in paragraph (a)(6) to new Rule 2290. The Commission finds that this provision is responsive to comments received and is consistent with the Exchange Act, particularly Sections 15A(b)(6) and 15A(b)(9).

IV. Accelerated Approval of Amendment No. 4 and Solicitation of Comments

The Commission finds good cause to approve Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The proposed rule change was published in the **Federal Register** on April 11, 2006.[9] FINRA submitted Amendment No. 4 in response to comments received on the proposed rule change. The Commission believes that Amendment No. 4 clarifies the obligations of FINRA member firms. Amendment No. 4 does not contain major modifications that are more restrictive than the scope of the proposed rule change as published in the **Federal Register**. The Commission believes that approving Amendment No. 4 will provide greater clarity and simplify compliance, thus furthering the public interest and the investor protection goals of the Exchange Act. Finally, the Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation.

Accordingly, the Commission believes good cause exists, consistent with Sections 15A(b)(6) and 19(b) of the Exchange Act,[10] to approve Amendment No.4 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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–NASD–2005–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–080. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–080 and should be submitted on or before November 8, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (SR–NASD–2005–080), as modified by Amendment Nos. 1, 2, 3, and 4, be, and hereby is, approved.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20585 Filed 10–18–07; 8:45 am]

BILLING CODE 8011–01–P

[9] *See supra* note 3.

[10] 15 U.S.C. 78o–3(b)(6), and 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56661; File No. SR–NASD–2005–100]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto, To Require Members To Provide Customers in TRACE-Eligible Debt Securities With Additional, Transaction-Specific Disclosures and To Notify Customers of the Availability of a Disclosure Document

October 15, 2007.

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 August 19, 2005, the National Association of Securities Dealers, Inc. ("NASD"), n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA"),[3] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA.[4] On December 21, 2005, NASD filed Amendment No. 1 to the proposed rule change. On January 26, 2007, NASD filed Amendment No. 2 to the proposed rule change. On July 16, 2007, NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

[4] Commission staff made certain changes to the description of the proposed rule change with the consent of FINRA staff to further clarify the description, to reflect the organization's name change, and to make other changes incidental to the consolidation during a telephone conversation between Sharon Zackula, Associate Vice President and Associate General Counsel, and James Eastman, Assistant General Counsel, FINRA, and Joshua Kans, Senior Special Counsel, and Kristina Fausti, Special Counsel, Division of Market Regulation, Commission, on March 20, 2007; telephone conversations between Sharon Zackula and James Eastman, and Kristina Fausti, on August 17, 2007, and August 20, 2007, respectively; and a telephone conversation between Sharon Zackula, and Josh Kans and Kristina Fausti, on September 21, 2007.

filed Amendment No. 3 to the proposed rule change. On August 21, 2007, FINRA filed Amendment No. 4 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to: (1) Adopt NASD Rule 2231, which would require members, subject to specified exceptions, to provide customers in transactions in debt securities that are TRACE-eligible securities, as defined in NASD Rule 6210(a), with additional, transaction-specific disclosures relating to applicable charges, credit ratings, the availability of last-sale transaction information, and certain interest, yield and call provisions; and (2) amend NASD Rule 2340 (customer account statements) to require members to notify certain customers of the availability of a disclosure document discussing debt securities authored by FINRA and deliver the document to customers upon request. The text of the proposed rule change and the associated disclosure document are set forth below. Proposed new language is in italics; proposed deletions are in brackets.

2231. Confirmation of Transactions in Debt Securities

(a) Confirmation of Transactions in Debt Securities.

(1) Except as otherwise provided herein, any member that is required to disclose to a customer information pursuant to Rule 10b–10 under the Act in connection with any transaction in a debt security also shall, with respect to any TRACE-eligible security, disclose to the customer, other than an institutional account, the information set forth in paragraph (b). Except as otherwise provided herein, this information shall be disclosed in the same manner and at the same time in which the member discloses to the customer information in connection with the transaction pursuant to Rule 10b–10 under the Act. A member need not disclose to customers information required to be disclosed under this Rule if the member discloses such information pursuant to Rule 10b–10 under the Act.

(2) For purposes of this Rule:

(A) "Institutional account" shall have the same meaning it has in Rule 3110 and means an account that, within the past twelve months, the member has determined is an institutional account;

(B) "Debt security" shall have the same meaning it has in Rule 10b–10 under the Act, except that any exempted security or asset-backed security is excluded from this definition;

(C) "Exempted security" shall have the same meaning it has in Section 3(a)(12) of the Act;

(D) "Asset-backed security" shall have the same meaning it has in Rule 10b–10 under the Act;

(E) "Nationally recognized statistical rating organization" ("NRSRO") shall have the same meaning it has in Rule 15c3–1 under the Act;

(F) "Clearing member" shall have the same meaning it has in Rule 3230;

(G) "Service bureau" shall have the same meaning it has in IM–4632–1 under Rule 4632; and

(H) "TRACE-eligible security" shall have the same meaning it has in Rule 6210(a).

(b) Information Required To Be Disclosed

(1) Debt security information. A member must disclose the debt security's CUSIP number and the TRACE symbol of the debt security if one has been designated by NASD.

(2) Broker-dealer charges. A member must disclose, if acting as principal, the following: "The broker-dealer's remuneration on this transaction has been added to the price in the case of a purchase or deducted from the price in the case of a sale."

(3) Credit rating. A member must disclose the lowest credit rating(s) it has received at the time the transaction confirmation is generated, the date of such credit rating(s), and the NRSRO(s) assigning the credit rating(s) of the debt security the member purchased for or from or sold to or for a customer, if:

(A) The member has entered into a written agreement with the NRSRO to receive such credit rating(s);

(B) A service bureau that provides confirmation services to the member for the transaction has entered into a written agreement with the NRSRO to receive such credit rating(s) and provides them to the member as part of the confirmation services at no additional cost; or

(C) A member that acts as a clearing member for, and provides confirmation services to, the member for the transaction has entered into a written agreement with the NRSRO to receive such credit rating(s) and provides them to the member as part of the confirmation services at no additional cost.

(4) Indicators of marketability and liquidity. A member must disclose that transaction price information for the securities subject to this Rule is publicly available on the Internet at http://www.bondinfo.com for the customer's non-commercial use at no charge, or at other sources that provide such information.

(5) Cash flow information. For purchases only, a member must disclose on a per debt security basis the following:

(A) The frequency of interest and/or principal payments as applicable, if either are paid on a periodic, fixed schedule. If the debt security does not pay interest or principal on a regular schedule, a member must disclose the following: "This security does not pay interest or principal on a regular schedule. Information regarding the frequency of interest or principal payments for this security will be furnished to you upon written request." A member shall provide such additional information in writing within three business days of receiving a customer's written request, or within ten business days if such a request is received more than six months after the transaction's settlement date.

(B) Yield to maturity, and, if the debt security is subject to call prior to maturity through any means, a notation of "callable" shall be included. The date and price of the next pricing call shall be included and so designated. If the debt security is continuously callable (i.e., callable on any date after the first call date), a member must disclose the following: "This security is continuously callable." If there are any call features in addition to the next pricing call, a member must disclose the following: "Additional call features exist that may affect yield; additional information will be furnished to you upon written request." A member shall provide such additional information in writing within three business days of receiving a customer's written request, or within ten business days if such a request is received more than six months after the transaction's settlement date.

(C) For debt securities carrying a variable coupon rate, a member must disclose the following: "The coupon rate may vary. Additional information that describes the way in which the debt security's interest and principal payments are calculated will be furnished to you upon written request." A member shall provide such additional information in writing within three business days of receiving a customer's written request, or within ten business days if such a request is received more than six months after the transaction's settlement date. Any such additional information shall contain:

(i) The amount of the next interest payment based on the current coupon rate,

(ii) A statement that this amount will change if the coupon rate changes

(iii) How often the coupon rate may be recalculated,

(iv) An explanation of the event(s) that may trigger the recalculation, and

(v) The formula for recalculating such coupon rate.

(D) For debt securities that are callable and, at issuance, are not structured to include scheduled interest payments (e.g., "zero coupon bonds"), the dollar equivalent of the debt security's imputed interest until the next occurring call date (assuming that the price at which the debt security may be called is paid to the holder).

* * * * *

2340. Customer Account Statements

(a)–(d) No change.

(e) Notice of Availability of NASD Disclosure on Debt Securities

(1) Except as otherwise provided in subparagraph (2) below, a member that has provided a customer disclosure under Rule 2231 during the period since the last account statement was sent to the customer also must disclose the following: "A disclosure document discussing your rights as a bondholder and some of the risks related to buying and holding bonds, titled 'Important Information You Need to Know About Investing in Corporate Bonds,' has been prepared by NASD and is available online at www.finra.org. A paper version of this document is available from your broker upon your written request."

(2) In lieu of disclosing the internet Web site address "www.finra.org" in the statement set forth in subparagraph (1), a member may disclose the member's internet Web site address, provided that the document, "Important Information You Need to Know About Investing in Corporate Bonds," or an internet hyperlink directly thereto, is easily accessible from the internet address that is disclosed.

(3) A member shall provide the document, "Important Information You Need to Know About Investing in Corporate Bonds," to any customer to whom a statement is provided pursuant to subparagraph (1) within three business days of receiving a customer's written request, or within ten business days if such a request is received more than six months after the transaction's settlement date. This document provides information that an investor should know immediately prior to buying or selling a bond such as the basics of bond pricing, yield, and the difference between yield to maturity and yield to call. It also describes certain risks that bond investors assume in such transactions (e.g., interest rate risk and liquidity risk). This document also contains a short description of basic types of bonds (e.g., floating rate bonds, zero coupon bonds and convertible bonds) as well as debt structure (e.g., junior or subordinated debt). Finally it informs investors that even if they are not charged a commission they are nevertheless paying a fee to their broker-dealer when they buy or sell bonds.

[(e)]*(f)* Exemptions

Pursuant to the Rule 9600 Series, the Association may exempt any member from the provisions of this Rule for good cause shown.

* * * * *

Important Information You Need to Know About Investing in Corporate Bonds

This document is intended to provide you with some basic facts about the most common features of corporate bonds, and to alert you to some of the risks associated with buying, selling, and holding corporate bonds.

As with any investment, before buying a corporate bond, you should analyze the bond on its own merits, weighing its risks, costs, and rewards. Consult with your firm about any questions you may have about investing in a particular bond.

Corporate Bond Basics

What Is a Corporate Bond?

Corporate bonds are, at their simplest, loans that investors make to public and private corporations. Consequently, bonds are referred to as debt securities. Corporations generally issue corporate bonds to raise money for capital expenditures, operations, and acquisitions.

Typically, bondholders receive interest payments during the term of a bond (or, for as long as a bondholder owns a bond), at the stated interest rate—also called the coupon rate. In addition, if bondholders hold bonds until maturity, they also are repaid the principal amount, called par value or face amount.

Bond Price and Yield

Price

If you sell a bond before it matures, you may not receive the full principal amount of the bond. This is because a bond's price is not based on the par value of the bond. Rather, it is set in the secondary market and is established by the current market values of such bonds, which may be more or less than the amount of principal the issuer would be required to pay the bondholder at maturity. Therefore, it is impossible to predict in advance the price that a bondholder will receive if the bondholder purchases a bond and later sells the bond before maturity.

The price of a bond is often above or below its par value because the price is adjusted according to current interest rates in the whole market for the same debt security and comparable debt securities. For example, if the bond you desire to purchase has a coupon rate of 8 percent, and similar quality new bonds available for sale have a coupon rate of 5 percent, you will have to pay more than the par amount of the bond that you intend to purchase, because you will receive more interest income than the current coupon rate (5 percent) being attached to similar bonds. (A bond's coupon rate is the rate of interest paid periodically on the face amount of the obligation.)

Yield

Yield is the overall return on the capital you invest in the bond. Yield is similar to, but different from, a bond's coupon rate. This distinction is important, because as is explained above, while a bond's face amount or par value is fixed, its market value almost always changes over time. Because bond prices fluctuate continually in the market, the yield your bond investment will provide if it is sold prior to maturity also changes constantly. A bond's price is inversely related to its yield. As a bond's price increases, its associated yield decreases; as the price of a bond decreases, the associated yield increases.

For example, a bond that sells today for $1,000 and has a coupon rate of 8 percent has a current yield of 8 percent. Because the "price" equals the face amount of the bond, the current yield of 8 percent equals the 8 percent coupon rate. However, usually after the first sale of a bond, the price of a bond differs from the face amount. For example, if the same bond sells tomorrow for $990, the current yield would be slightly higher than 8 percent.

Yield to Maturity and Yield to Call: What's the Difference?

Yield to maturity is calculated by taking into account the total amount of interest you will receive over time, your purchase price (the amount of capital you invested), the face amount (or other amount you will be paid when the issuer "redeems" the bond), the time between interest payments, and the time remaining until the bond matures.

If you hold a callable bond, another type of yield calculation, yield to call, also is important for you to understand. This calculation takes into account the

impact on a bond's yield if it is called prior to maturity and is often done using the first date on which the issuer could call the bond. (Other call dates may be used in specified circumstances.) A bond's yield to call may be lower than its yield to maturity.

To get a more accurate picture of what a bond will cost you or what you received for it, you should also ask your broker to calculate the yield adjusting the purchase price up (when you purchase) or down (when you sell) by the amount of the mark-up or commission (when you purchase) or mark-down or commission (when you sell) and other fees or charges that you are charged by your broker for its services. This is called yield reflecting broker compensation.

Corporate Bond Risks

Like virtually all investments, corporate bonds carry risk. It is important that you fully understand the risks of investing in corporate bonds. These risks include:

Interest Rate Risk

When interest rates rise, bond prices fall, and when interest rates fall, bond prices rise. Interest rate risk is the risk that changes in interest rates generally in the U.S. or the world economy may reduce (or increase) the market value of a bond you hold. Interest rate risk increases the longer that you hold a bond. For example, if interest rates rise throughout the economy, bond issuers, along with other borrowers, will need to offer potential bondholders higher rates to compete with the higher interest rates available elsewhere.

Any bonds issued in a period of rising interest rates generally will carry higher coupon rates, which will be more attractive to potential bondholders than the coupon rate paid by bonds issued before the rise in interest rates. This decreased appetite for older bonds that pay lower interest depresses their price in the secondary market, which would translate into your receiving a lower price for your bonds if you chose to resell them in a period of rising interest rates. The opposite holds true as well, and the market value of older bonds that pay higher than current interest rates tends to rise in periods where interest rates are generally declining.

Call and Reinvestment Risk

Bonds with a call provision can be redeemed or "called" by the bond issuers, requiring bondholders to redeem their bonds at the call price well before their maturity dates. Bonds often are called when market interest rates are falling, because bond issuers want to refinance their debt at lower interest rates (similar to when a home owner seeks to refinance a mortgage at a lower rate when mortgage interest rates decrease). This is known as call risk.

With a callable bond, a bondholder might not receive the bond's coupon rate for the entire term of the bond, and it might be difficult or impossible to find an equivalent investment paying rates as high as the called bond. This is known as reinvestment risk. Additionally, at any given point in time, the period that a callable bond will generate cash flow is uncertain. This risk will be reflected in a lower market value for the bond because any appreciation in the value of the bond's periodic interest payments may not be fully realized if it is "called away" by its issuer.

Refunding Risk and Sinking Funds Provisions

A sinking fund provision, which often is a term included in bonds issued by industrial and utility companies, requires a bond's issuer to retire a certain number of bonds periodically. This can be accomplished in a variety of ways, including through purchases in the secondary market or forced purchases directly from bondholders at a pre-determined price.

Holders of bonds subject to sinking fund redemptions should understand that they risk having their bonds called (or redeemed) prior to maturity. Unlike other bonds subject to call, depending on the sinking fund provision, there may be a relatively high likelihood that the issuer will redeem some or many of the bonds prior to maturity, even if market-wide interest rates do not change.

It is important to understand that there is no guarantee that an issuer of these bonds will be able to comply strictly with any redemption requirements. In certain cases, an issuer may need to borrow funds or issue additional debt to refinance an outstanding bond issue subject to a sinking fund provision when it matures. If the issuer is unable to raise adequate funds to refinance the outstanding issue, the issuer could default and the bondholder could lose all or most of his/her investment.

Default and Credit Risk

If you ever loaned money to someone, chances are you gave some thought to the likelihood of being repaid. Some loans are riskier than others. The same is true when you invest in bonds. You are taking a risk that the issuer's promise to repay both principal and interest will not be upheld. In the case of Treasuries and other government-issued bonds backed by the "full faith and credit of the U.S. government," that risk is almost zero. However, there is some risk of default with corporate bonds. This means the corporations issuing them may either be late paying bondholders or—in worst-case scenarios—be unable to pay at all.

Bond ratings are a way of measuring default and credit risk. Bond ratings are issued by private companies called credit rating agencies. In issuing a credit rating, a credit rating agency reviews relevant information supplied to it by the issuer or its agents, and from sources the credit rating agency considers reliable, including financial information such as the issuer's financial statements, and assigns a rating (for example, AAA (or Aaa) to D).

Generally, bonds are categorized in two broad categories—investment grade and non-investment grade. Bonds that are rated BBB (or Baa) or higher are considered investment grade. Bonds that are rated BB (or Ba) or lower are non-investment grade. Non-investment grade bonds are also referred to as high-yield or junk bonds, and in some cases, distressed bonds. These bonds are considered riskier investments because the issuer's general financial condition is less sound, and the issuer may default—(may not be able to pay the interest and principal to bondholders when they are due).

Many bondholders heavily weigh the rating of a particular corporate bond in determining if the corporate bond is an appropriate and suitable investment for them. Although credit ratings are an important indicator of creditworthiness, you should also consider that the value of the bond might change depending on changes in the company's business and profitability. The credit rating could be revised downward. In the worst scenario, if you own a bond and the company that issues it defaults you could lose all of your investment. Finally, some bonds are not rated. In such cases, an individual bondholder may find it difficult to assess the overall creditworthiness of the issuer of the bond.

Liquidity Risk

You should determine whether the bond in which you are interested has traded frequently, infrequently, or not at all in recent months, and if your broker regularly buys and sells the bond. While certain bonds are very actively traded and are relatively "liquid," other bonds, including many high-yield bonds, are traded much less frequently or not at all and may not be easy to sell. If you think you might need to sell the bonds you are purchasing prior to their maturity, you

should carefully consider the likelihood of your being able to do so, and whether your broker will be able and willing to assist you in liquidating your investment at a fair price reasonably related to then current market prices. It is possible that you may be able to re-sell a bond only at a heavy discount to the price you paid (loss of some principal) or not at all. Additionally, bonds that are less frequently traded may be subject to wider "spreads" in the secondary market, which means that you would receive less for your bond if selling, or pay more if buying, than otherwise would be the case.

Corporate Bonds with Special Features

It also is important to understand any special features a bond may have before you buy, since these features may affect risk.

Floating Rate Bonds

Floating-rate bonds have a floating or variable interest rate that is adjusted periodically, or floats, using an external value or measure (for example, the prime rate or a stock index). Such bonds offer protection against interest rate risk, but their coupon rate is usually lower than those of fixed-rate bonds.

Zero-Coupon Bonds

Zero-coupon bonds, unlike other bonds, don't make regular interest payments. Instead, the bondholder buys the bond at a discount from the face value of the bond, and, when the bond matures, the issuer repays the bondholder the face amount. The difference between the discounted amount the bondholder pays upon purchase and the face amount later received is the imputed interest. Because zero-coupon bonds don't pay any interest until maturity, their prices may be more volatile than other bonds with similar maturities that pay interest periodically.

Secured Bonds

Secured bonds are backed by collateral that the bond's issuer has agreed to sell if it otherwise is unable to meet its obligation when the bond matures. For example, a bond might be backed by a specific factory or industrial equipment. However, any such backing is only as good as the value of the asset being used as collateral, the value of which can decrease during the term of the bond.

Bonds that are not backed by any collateral are unsecured and are sometimes called debentures. Debentures are backed solely by an issuer's promise to repay you. Most corporate bonds are debentures.

Guaranteed and Insured Bonds

Certain bonds may be referred to as guaranteed or insured. This means that a third party has agreed to make the bond's interest and principal payments if the issuer is unable to make these payments. You should keep in mind that such guarantees only are as valuable as the creditworthiness of the third party making the guarantee or providing the insurance.

Convertible Bonds

Convertible bonds may be converted into the stock of the bond's issuer. A bondholder should be careful to understand the conditions under which the bonds may be converted, as this right often is contingent upon the issuer's stock reaching a certain price level, among other things. Bond investors also should ask their broker or financial adviser whether there is any charge or fee associated with making a conversion.

Junior or Subordinated Bonds

The more junior bonds issued by a company typically are referred to as subordinated debt, because a junior bondholder's claim for repayment of the principal of such bonds has a lower priority than the claims of a bondholder holding an issuer's more senior debt. Therefore, in the event of a bankruptcy, junior bondholders receive payment only after senior debt claims are paid in full. Additionally, other types of claims also may have priority on the issuer's remaining assets over the claims of all bondholders (e.g., certain supplier or customer claims). Therefore, although bondholders generally are paid prior to stockholders in a bankruptcy proceeding, this doesn't mean the bondholder will get any money back because the issuer's assets could be reduced to zero by other creditors that have the right to be paid before bondholders.

Broker Compensation for Selling Bonds

No Commission does not Mean No Charge.

You should understand that your broker is being compensated for performing services for you, even if you are not charged a commission when you buy or sell a bond. In most bond transactions, brokers are compensated, even though a commission charge is not disclosed, because the transaction is structured as a principal transaction (i.e., your broker sells you a bond it already owns). This is because when a dealer sells you a bond in a principal capacity, the dealer increases or marks up the price you pay over the price the dealer paid to acquire the bond. The mark-up is the dealer's compensation and is similar to a commission. Similarly, if you sell a bond, a dealer will offer you a price that includes a mark-down from the price that the dealer believes he can sell the bond to another dealer or another buyer. You should understand that the firm has charged you a fee for its services.

Would A Similar Bond Cost Less?

Finally, it is important to consider the potential conflicts that your broker might have when it sells you a bond. Bonds issued by different issuers often have very similar risk profiles and carry similar coupon rates. Before you buy a bond, you should shop around and consider if there are other bonds that you could buy at a cheaper price than the one recommended by your broker. You should consider whether there are other bonds available with similar risk/return profiles that might be available at lower cost. You also should try and understand how your broker is being compensated for any bond transaction, particularly those that are recommended to you where similar bonds may be available.

* * * * *

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

Background

With the implementation of FINRA's Trade Reporting and Compliance Engine ("TRACE") in 2002 and the subsequent availability of a consolidated view of transaction information in the U.S. corporate bond market, a number of trends have emerged that have implications for the regulatory framework of the corporate debt market. For example, approximately 65% of TRACE transactions are for amounts of less than $100,000, indicating significant individual investor participation in the corporate bond

market.[5] FINRA believes that helping investors to understand some of the key characteristics of particular bonds that they are buying or selling as well as the key risks associated with bond investing is an important element of its efforts to enhance transparency in the corporate debt market. FINRA also believes that the proposed rule change will further efficiency, competition, and capital formation in the market for corporate debt securities. In particular, FINRA anticipates that the proposed rule change, by providing greater transparency to debt securities transactions, will result in greater efficiency in pricing and further competition in the market for corporate debt securities. FINRA believes the proposed rule change also will enhance capital formation to the extent that investors are better able to assess the risks and benefits related to investing in corporate debt securities.[6]

Proposed Disclosures

Proposed NASD Rule 2231 would require members, subject to certain exceptions,[7] to provide customers in TRACE-eligible securities transactions,[8] with additional transaction-specific disclosures relating to applicable charges, credit ratings, the availability of last-sale transaction information, and certain interest, yield and call provisions.[9] These disclosures would have to be provided in the same manner and at the same time in which a broker-dealer discloses information under Rule 10b–10.[10]

FINRA believes that the information in the proposed disclosures generally is of the type that currently is included in confirmations of transactions in various types of securities (*e.g.*, municipal securities). While the disclosures proposed by FINRA are narrowly tailored to the specific concerns that have been raised regarding confirmation disclosure in TRACE-eligible securities transactions, FINRA has identified where analogous disclosures are today required. The specific additional disclosures would include the security's CUSIP[11] number and its TRACE symbol[12] to assure that the transaction is identified as clearly as possible. A member acting as principal would be required to disclose, if applicable, a statement relating to transaction charges.[13] This standard disclosure is intended to clarify for investors who are dealing with a member acting as a principal, in the capacity of either a dealer or market maker, whether the member has obtained any remuneration in connection with the customer's debt securities transaction. FINRA is not proposing to require that the amount of the member's mark-up or mark-down be

[5] *See* NASD *Notice to Members* 05–21 (April 2005); *see also Report of the Corporate Debt Market Panel*, September 2004, *http://www.finra.org/web/groups/reg_systems/documents/regulatory_systems/p011445.pdf* ("Panel Report"). The Corporate Debt Market Panel ("Panel") was a group of twelve experts in the fixed income area appointed by the NASD Board of Governors to make recommendations to NASD regarding how best to ensure market integrity and investor protection in the corporate bond market. The Panel reviewed information showing significant levels of participation by individual investors in the corporate bond market. For example, the Panel Report notes that information obtained from TRACE shows that approximately "two thirds of corporate bond transactions reported to TRACE are in quantities of $100,000 or less in value, a size widely viewed as representative of individual investor activity." Panel Report at 4. The Panel also reviewed NASD surveys showing that individual investors often do not understand certain key structural aspects of specific bonds or the market in which bonds are traded. For example, 34% of individuals surveyed did not believe that they were paying a fee for buying or selling a bond and approximately 60% of investors surveyed did not understand that bond prices generally fall as interest rates rise. Panel Report at 4. The Panel concluded that individual investors would benefit from additional guidance and information disclosure, and recommended, among other things, that investors obtain improved access to information on bonds and receive increased disclosures regarding their bond transactions. The proposed rule change is based on the Panel's recommendations and also reflects significant input from other NASD advisory committees, such as NASD's Fixed Income Committee.

[6] *See generally* Panel Report.

[7] Proposed NASD Rule 2231's disclosures would not be required to be provided to institutional accounts, and proposed NASD Rule 2231 would not apply to transactions in asset-backed or exempted securities. "Institutional account" would have the same meaning it has in NASD Rule 3110(c)(4). "Asset-backed security" would have the same meaning it has in Rule 10b–10(d)(10) under the Act. *See* 17 CFR 240.10b–10. "Exempted security" would have the same meaning it has in Section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)). *See* paragraphs (a)(2)(A), (a)(2)(D) and (a)(2)(C) of proposed NASD Rule 2231, respectively.

[8] Proposed NASD Rule 2231 only would apply to a transaction in a "debt security" that also is a "TRACE-eligible security," which would have the same meaning it has in NASD Rule 6210(a). *See* proposed NASD Rule 2231(a)(2)(H). Debt security would have the same meaning it has under Rule 10b–10 under the Act except that it would not include any asset-backed security or exempted security. *See* Proposed NASD Rule 2231(a)(2)(B).

[9] Under proposed NASD Rule 2231(a) members would not be required to make any of the disclosures, which are specified in proposed paragraph (b), that are duplicative of disclosures already required under SEC Rule 10b–10 for that transaction. Proposed NASD Rule 2231(a)(1). Also, under proposed NASD Rule 2231(a), unless otherwise provided, the information would be required to be disclosed in the same manner (*e.g.*, frequency) and at the same time in which the member discloses information to the customer about the specific debt transaction pursuant to SEC Rule 10b–10. *Id.* For example, the Commission has provided exemptive relief to broker-dealer sponsors of "wrap fee programs" to permit those broker-dealers to confirm transactions in their wrap fee programs through periodic statements, not less often than quarterly (subject to several conditions), in lieu of immediate trade confirmations that otherwise would be required under SEC Rule 10b–10. *Money Management Institute, Securities Industry Association, SEC No-Action Letter*, 1999 SEC No-Act Lexis 934 (August 23, 1999). FINRA would defer to SEC and SEC staff interpretations of SEC Rule 10b–10 when interpreting proposed NASD Rule 2231's delivery requirements, and members properly relying upon such interpretations for purposes of satisfying SEC Rule 10b–10's delivery requirements also would be deemed to satisfy proposed NASD Rule 2231's delivery requirements. If the SEC approves the proposed Rule, FINRA would provide guidance in this area only in instances where the SEC or its staff has not already addressed a particular issue.

[10] Proposed NASD Rule 2231(a)(1). However, FINRA would not interpret proposed NASD Rule 2231 as requiring members to provide the required supplemental disclosures on the same piece of paper or in the same electronic document (if the confirmation is provided electronically) as that containing the SEC Rule 10b–10 confirmation, because FINRA believes such requirements could be unwieldy without materially enhancing investor protection. Nevertheless, FINRA anticipates that the supplemental disclosures of proposed NASD Rule 2231 and the confirmation disclosures required by SEC Rule 10b–10 would be delivered simultaneously.

[11] Proposed NASD Rule 2231(b)(1). "CUSIP" stands for Committee on Uniform Securities Identification Procedures. According to FINRA, CUSIP numbers belong to Standard and Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"). S&P licenses to FINRA the use of the terms "Committee on Uniform Securities Identification Procedures" and "CUSIP." *See* Municipal Securities Rulemaking Board ("MSRB") Rule G–15(a)(i)(B)(2) (requires disclosure of a security's CUSIP number); *cf.* SEC Rule 10b–10(a)(1) (requires disclosure of a security's "identity").

[12] Proposed NASD Rule 2231(b)(1). The TRACE symbol allows retail investors tomore easily identify the TRACE-eligible security as to the issuer. *See* SEC Rule 10b–10(a)(1) (requires disclosure of a security's "identity"); *cf.* MSRB Rule G–15(a)(i)(B)(1)(a) (for stripped coupon securities, requires confirmation disclosure of a security's "trade name and series designation"); MSRB Rule G–15(a)(i)(B)(1)(b) (for municipal fund securities, requires confirmation disclosure of "the name used by the issuer to identify such securities and, to the extent necessary to differentiate the securities from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation for such securities must be shown.")

[13] Proposed NASD Rule 2231(b)(2). The required disclosure for principal transactions, if applicable, would be "the broker-dealer's remuneration on this transaction has been added to the price in the case of a purchase or deducted from the price in the case of a sale." *Id.*; *cf.* SEC Rule 10b–10(e)(1)(ii) (a broker or dealer that effects "any transaction" for a customer in security futures products in a futures account must disclose "the source and amount of any remuneration received or to be received * * * including, but not limited to, markups, commissions, costs, fees, and other charges incurred in connection with a transaction* * * "); SEC Rule 10b–10(a)(2)(ii) (in certain circumstances a non-market maker acting as principal for its own account is required to disclose the "difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales)"), SEC Rule 10b–10(a)(2)(i) (must disclose capacity, and, when acting as agent for the customer, some other person, or for both the customer and some other person, the "amount of any remuneration received or to be received* * * ." under SEC Rule 10b–10(a)(2)(i)(B)). MSRB Rule G–15(a)(i)(A)(1)(e) (requires, in certain cases, certain disclosures regarding the broker-dealer's remuneration in the transaction)

disclosed because, under SEC Rule 10b–10, in debt securities transactions, an agency commission is required to be disclosed, but a principal's mark-up or mark-down is not. Under certain circumstances a member would be required to disclose the credit rating of the security and the Nationally Recognized Statistical Rating Organization ("NRSRO") assigning it the rating.[14] A member that subscribes to more than one NRSRO (or otherwise is provided credit ratings as described previously) and has more than one credit rating for a security, would be required to provide the lowest of such credit ratings to the customer.[15] A member would be required to disclose the credit rating if it, or the clearing firm or service bureau providing confirmation services to the member on the transaction, has entered into a written agreement with a rating agency to receive such credit ratings, and, in the case of a clearing firm or service bureau, those ratings are made available to the member for inclusion on the transaction confirmation at no additional cost.[16] A member would be required to disclose the credit rating it has received at the time the transaction confirmation is generated [17] as well as the date applicable to the credit rating. A member also would be required to disclose that transaction price information is publicly available for the security, and that a customer may obtain such information at the FINRA internet web site *http://www.bondinfo.com* for the customer's non-commercial use at no charge, or at other sources that provide such information, such as the Web site, investinginbonds.com.[18]

For customer purchases only, members would be required to provide the frequency of interest and/or principal payments as applicable, if either are paid on a periodic, fixed schedule.[19] If the debt security does not pay interest or principal on a regular schedule, the member must disclose the following: "This security does not pay interest or principal on a regular schedule. Information regarding the frequency of interest or principal payments for this security will be furnished to you upon written request." [20] Yield to maturity would be required to be disclosed and, if the debt security is subject to call prior to maturity through any means, a notation of "callable" also would be required to be included.[21] The date and price of the next pricing call would be required to be included and so designated.[22] If the debt security is continuously callable (*i.e.*, callable on any date after the first call date) a member would be required to disclose, "This security is continuously callable." [23] If there are any call features in addition to the next pricing call, disclosure must be made that: "Additional call features exist that may affect yield; additional information will be furnished to you upon written request." [24] For variable rate debt securities, the member would be required to inform the customer that the coupon rate may vary and that the member will provide additional information [25] in writing about the variable debt upon a customer's written request.[26] Finally, when a member sells to a customer a debt security that is callable and, at the time of issuance, is not structured to include scheduled interest payments (*e.g.*, "zero coupon bonds"), the member would be required to provide to the customer the dollar equivalent of the debt security's

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[14] Proposed NASD Rule 2231(b)(3); *cf.* SEC Rule 10b–10(a)(8) (requires disclosure that a debt security is unrated by an NRSRO, if applicable); MSRB Rule G–15(a)(i)(C)(3)(f) (requires disclosure that a debt security is unrated by an NRSRO, if applicable). Pursuant to the Credit Rating Agency Reform Act of 2006 and Commission rules thereunder, on June 28, 2007, the Commission announced that seven credit rating agencies applied to be registered with the Commission as NRSROs and could continue to represent themselves or act as NRSROs during Commission consideration of their applications. See SEC Press Release 2007–124 (June 28, 2007). The seven credit agencies are: A.M. Best Company, Inc., Dominion Bond Rating Service Limited, Fitch, Inc., Japan Credit Rating Agency, Ltd., Moody's Investors Service, Rating and Investment Information, Inc., and Standard and Poor's Rating Services. In issuing a credit rating, these organizations review relevant information supplied to them by the issuer or its agents, and from sources they consider reliable, including financial information such as the issuer's financial statements, and assign a rating, for example AAA (Aaa) to D.

[15] Proposed NASD Rule 2231(b)(3).

[16] It is FINRA's understanding that certain large clearing firms offer to disclose on a correspondent firm's transaction confirmation a "menu" of items for a fixed fee and that credit rating information typically is included as one of these menu items. FINRA noted in NASD *Notice to Members* 05–21 that, if the current proposal were adopted, FINRA would monitor the percentage of firms that subscribe to and disclose NRSRO ratings and would consider the advisability of mandating at least one subscription to an NRSRO if a uniform practice of disclosing NRSRO ratings did not arise. For example, FINRA might consider such an approach if the proposed Rule were adopted and FINRA became aware that member firms were seeking to avoid disclosing NRSRO ratings by paying their clearing firms or service bureaus a separate, nominal charge to receive such ratings to circumvent the requirement in proposed NASD Rule 2231(b)(3)(B) and (C) that requires a member to make such disclosures only if the member receives NRSRO ratings from its clearing firm "at no additional cost." Finally, a member that receives credit rating information and whose clearing firm also receives credit rating information would be permitted to choose which credit ratings to disclose so long as the credit rating was the lowest of the ratings it receives.

[17] Proposed NASD Rule 2231(b)(3). This provision has been revised in response to SEC staff comments and industry feedback and is intended to minimize the costs and operational burdens faced by members complying with this requirement. Members now would be permitted to use the lowest credit rating they have received or may receive as part of the confirmation preparation process. Members would not be required to disclose the credit rating available at the time a transaction is executed, which was initially proposed by FINRA in SR–NASD–2005–100.

[18] Proposed NASD Rule 2231(b)(4). Most transactions in TRACE-eligible securities, as well as other debt securities, are executed in the over-the-counter market; the proposed disclosure is intended to direct investors to a primary source of market data for TRACE-eligible securities transactions. In NYSE Rule 409(f), FINRA requires that broker-dealers disclose on confirmations the name of the securities market on which the confirmed transaction was made. The New York Stock Exchange granted temporary relief from this requirement in conjunction with the implementation of Regulation NMS. See NYSE Information Memorandum 07–28 (March 20, 2007). In *Regulatory Notice* 07–35 (August 2007) FINRA extended this relief until January 1, 2008.

[19] Proposed NASD Rule 2231(b)(5)(A); *cf.* MSRB Rule G–15(a)(i)(C)(2)(e) (must disclose "the basis on which interest is paid," if the security pays interest on other than a semi-annual basis).

[20] Proposed NASD Rule 2231(b)(5)(A).

[21] Proposed NASD Rule 2231(b)(5)(B); *cf.* SEC Rule 10b–10(a)(5) (must disclose yield to maturity); SEC Rule 10b–10(a)(6) (must disclose yield to maturity, type of call, call date and call price); MSRB Rule G–15(a)(i)(C)(2)(a) (must disclose if securities are callable, if callable through any means prior to maturity, must disclose date and price of next pricing call, and must disclose other call features, or in certain cases, provide notice that other call features exist and additional information will be provided upon request).

[22] Proposed NASD Rule 2231(b)(5)(B).

[23] *Id.*

[24] *Id.*

[25] Proposed NASD Rule 2231(b)(5)(C). The additional information required to be provided upon written request would be: (i) The amount of the next interest payment based on the current coupon rate, (ii) a statement that this amount will change if the coupon rate changes, (iii) how often the coupon rate may be recalculated, (iv) an explanation of the event(s) that may trigger the recalculation, and (v) the formula for recalculating such coupon rate. *Id.*; *cf.* MSRB Rule G–15(a)(i)(D)(2) (for municipal collateralized mortgage obligations, must include a statement that the actual yield of such security may vary according to certain variables and a statement that information concerning the factors that affect yield will be furnished upon written request); MSRB Rule G–15(a)(i)(C)(2)(a) (for callable securities if there are any call features in addition to the next pricing call, must provide a statement that "additional call features exist that may affect yield; complete information will be provided upon request"). FINRA also notes that in registered offerings much of this information would be set forth in the prospectus and the indenture concerning the debt security, which would be publicly available to investors.

[26] Proposed NASD Rule 2231(b)(5)(C); *cf.* SEC Rule 10b–10(a)(4) (for transactions in debt securities subject to redemption, must provide "a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such redemption could affect the yield represented and the fact that additional information is available upon request* * *"); SEC Rule 10b–10(a)(7) (for transactions in certain asset-backed securities, must disclose that the actual yield may vary depending upon certain factors and that additional information is available upon request).

imputed interest until the next occurring call date (assuming that the price at which the debt security may be called is paid to the holder).[27] Additionally, customers would have the right to make a written request for certain additional cash flow information as well as the disclosure document (see discussion below of proposed disclosure document).[28] Members would have three business days to provide a written response to such requests, unless the request were made more than six months after the settlement of a transaction, in which case a member would have ten business days to respond.[29]

Proposed Disclosure Document

A member that has provided a customer disclosure under proposed NASD Rule 2231 during the period since it last sent an account statement to its customer also would be required to notify that customer of the location and availability of a FINRA-authored disclosure document that discusses investing in bonds, titled "Important Information You Need to Know About Investing in Bonds."[30]

Effective Date

FINRA would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. As proposed, the effective date would not be later than nine months following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act in general, and Section 15A(b)(6) of the Act[31] in particular, which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and 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. FINRA believes that the proposed rule change is consistent with these requirements in that it would provide investors with information with which they might better assess the quality of their executions in debt securities transactions, the fees charged, and whether the security purchased fits their investment goals.

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

FINRA's statement on comments received from members, participants, or others is set forth in Exhibit 1a to Amendment No. 1 to SR–NASD–2005–100. At the Commission staff's request, FINRA staff has agreed to extend the comment period for the proposed rule change from 21 days to 45 days from its publication in the **Federal Register**.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does

[27] Proposed NASD Rule 2231(b)(5)(D); *cf.* SEC Rule 10b–10(a)(6) (for debt security transactions effected on the basis of yield, must disclose the "dollar price calculated from the yield at which the transaction was affected"); MSRB Rule G–15(a)(i)(A)(5)(a)(ii) ("dollar price shall be computed"). This disclosure is intended to provide investors with an easily understood figure reflecting information similar to that considered by many institutional investors who consider a security's compound accreted value ("CAV") when investing in certain bonds. CAV is, as of a particular date, a computation of the aggregate of a security's principal and interest.

[28] *See* proposed NASD Rule 2231(b)(5)(A)–(C) and proposed NASD Rule 2340(e)(1).

[29] *See* proposed NASD Rule 2231(b)(5)(A)–(C) and proposed NASD Rule 2340(e)(3).

[30] Proposed NASD Rule 2340(e). The proposed rule change would redesignate current NASD Rule 2340(e), which governs FINRA's exemptive authority with respect to its customer account statement rule, as NASD Rule 2340(f).The proposed disclosure document describes various types of corporate bonds and their common features or provisions (*e.g.*, coupon rate, face value, and maturity), as well as risks investors should consider before investing in debt securities, such as interest rate risk, call and reinvestment risk, refunding risk (and sinking fund provisions), and default and credit risk (including the differences between subordinated and non-subordinated debt). The document also addresses other topics, including bond pricing, the relationship between price and yield, and the difference between a bond's yield to maturity and its yield to call. FINRA believes the disclosure document should aid investors in determining whether a bond is an appropriate investment given the investor's investment objectives. Members would be permitted to provide customers with the FINRA internet web site address where this disclosure document is located, or the member's own internet web site address, provided that this disclosure document, or an internet hyperlink directly thereto, is easily accessible from the internet address that is provided to customers. Members would be required to provide a paper copy of this disclosure document upon request, but would be permitted to provide this disclosure document in electronic form (*e.g.*, as an attachment to an e-mail) if the customer requests that it be delivered in electronic form.

[31] 15 U.S.C. 78o–3(b)(6)

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–NASD–2005–100 and should be submitted on or before December 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Nancy M. Morris,

Secretary.

[FR Doc. E7–20601 Filed 10–18–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56656; File No. SR–NYSEArca–2007–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and To Specify That Certain Reduced-Value Options on Broad-Based Security Indexes Have No Position and Exercise Limits

October 12, 2007.

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 September 14, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by NYSE Arca. On October 1, 2007, NYSE Arca submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its rules to eliminate the position and exercise limits for options on the Russell 2000 Index ("RUT"), and to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nysearca.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, NYSE Arca 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. NYSE Arca 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

NYSE Arca proposes to amend Rules 5.15(a) and 5.17(a)(13) in order to: (1) Eliminate position and exercise limits for options on RUT, a multiply listed and heavily traded broad-based security index; and (2) specify that reduced-value options on broad-based security indexes for which full-value options have no position limits will similarly have no position limits.

Eliminate Position and Exercise Limits for RUT Options

NYSE Arca presently trades options on one broad-based index, RUT. However, the Exchange believes that the circumstances and considerations that the Commission relied upon in approving the elimination of position and exercise limits for another heavily traded broad-based index options (*e.g.*, NASDAQ–100 Index ("NDX"), listed on the Chicago Board Options Exchange ("CBOE"))[5] equally apply to NYSE Arca's proposal to eliminate position and exercise limits for options on RUT. In addition, the Commission recently approved similar proposals by CBOE and the American Stock Exchange LLC ("Amex") to eliminate position and exercise limits for RUT options.[6]

In approving the elimination of position and exercise limits for NDX options on CBOE, the Commission considered the capitalization of this index and the deep and liquid markets for the securities underlying the index that significantly reduced the concerns of market manipulation or disruption in the underlying markets.[7] The Commission also noted the active trading volume for options on the index. The Exchange believes that RUT shares these factors in common with NDX. As of July 31, 2007, the approximate market capitalization of NDX was $2.28 trillion, the average daily trading volume ("ADTV") for the component of NDX was 572 million shares and the ADTV for options on NDX was approximately 64,000 contracts per day. NYSE Arca believes that RUT has comparable characteristics. The market capitalization for RUT is $1.73 trillion, the ADTV for the underlying securities is 535 million shares, and the ADTV for the option is approximately 79,000 contracts.

In approving the elimination of position and exercise limits for NDX, the Commission also noted that financial requirements imposed by the options exchanges and the Commission serve to address concerns that an exchange member, an Options Trading Permit ("OTP") Holder[8] in the case of NYSE Arca, or its customer, may try to maintain an inordinately large unhedged position in NDX options. These same financial requirements also apply to RUT options. Under NYSE Arca rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[9] to the extent of any resulting margin deficiency.[10]

In approving the elimination of position and exercise limits for NDX, the Commission relied heavily on

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[32] 32 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2005–41) ("NDX Approval Order").

[6] *See* Securities Exchange Act Release Nos. 56351 (September 4, 2007), 72 FR 51875 (September 11, 2007) (SR–Amex-2007–81); and 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR–CBOE–2007–79) (collectively, "RUT Approval Orders").

[7] *See* NDX Approval Order, supra note 5.

[8] OTP Holder is defined in NYSE Arca Rule 1.1(q). OTP Holders have the status of a "member" of the Exchange as that term is defined in Section 3 of the Act. *See* 15 U.S.C. 78c.

[9] 17 CFR 240.15c3–1.

[10] *See* NYSE Arca Rule 5.17(a)(14).

CBOE's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on the index. NYSE Arca represents that the current Exchange surveillance procedures are adequate to continue monitoring RUT options, once the position and exercise limits are eliminated. In addition, the Exchange intends to impose a reporting requirement on NYSE Arca OTP Holders and OTP Firms (other than NYSE Arca market-makers) that trade RUT options. This reporting requirement would require OTP Holders and OTP Firms who maintain in excess of 100,000 RUT option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Options Surveillance Department. The Exchange would take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.[11] The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.

The Exchange believes that eliminating position and exercise limits for RUT options is consistent with approved rules relating to similar broad-based index products currently trading on other exchanges. The Exchange believes that eliminating the position and exercise limits for options on RUT will allow NYSE Arca OTP Holders and OTP Firms greater hedging and investment opportunities.

Elimination of Position Limits for reduced value Options on Broad-Based Indexes for which there are not Position and Exercise Limits for Full Value Options

The Exchange may list and trade reduced-value options on broad-based indexes for which the Exchange also lists and trades full-value options.[12] The Exchange proposes to amend Rule 5.15(a) to state that reduced-value options on broad-based security indexes for which full value options have no position and exercise limits will similarly have no position and exercise limits.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow NYSE Arca members and their customers greater hedging and investment opportunities in RUT options without further delay. The Commission notes that it recently approved substantially similar proposals filed by Amex and CBOE.[19] The Commission believes that NYSE Arca's proposal to eliminate position and exercise limits for RUT options raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[20]

At any time within 60 days of the filing of such 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.[21]

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–NYSEArca-2007–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2007–94. This file number should be included on the

[11] Telephone conversation between Andrew Stevens, Assistant General Counsel, NYSE Arca, and Theodore S. Venuti, Special Counsel, Division of Market Regulation, Commission, on October 12, 2007.

[12] NYSE Arca does not presently list or trade reduced-value options.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[18] *Id.*

[19] *See* RUT Approval Orders, *supra* note 6.

[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on October 1, 2007, the date on which the Exchange submitted Amendment No. 1.

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2007–94 and should be submitted on or before November 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20587 Filed 10–18–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 5912]

Industry Advisory Panel: Notice of Charter Renewal

The Assistant Secretary for Management has approved the renewal of the charter for the Industry Advisory Panel of Overseas Buildings Operations for an additional two-year period. The panel meets quarterly in the Harry S. Truman Building, U.S. Department of State, located at 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The majority of each meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Building Operations' senior management and the panel members, on design, operations, and building maintenance. The meetings are open to the public and are subject to advance registration and provision of required security information. Procedures for registration are included with each meeting announcement, no later than fifteen business days before each meeting.

If you have any questions, please contact Andrea Walk at *walkam@state.gov* or on (703) 516–1544.

Dated: October 2, 2007.

Charles E. Williams,

Director and Chief Operating Officer Overseas Buildings Operations, Department of State

[FR Doc. E7–20641 Filed 10–18–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5911]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 13, 2007 at the U.S. Department of State, Washington, DC. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4) and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial information that is considered privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 4, 2007.

Gregory B. Starr,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E7–20640 Filed 10–18–07; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 5962]

U.S. Department of State Advisory Committee on Private International Law: Study Group on Consumer Protection

One of the goals of the Organization of American States is to harmonize private international law through Inter-American Specialized Conferences on Private International Law (CIDIP). Currently states are drafting instruments for "CIDIP–VII," which will focus inter alia on consumer protection. States are currently reviewing a draft Brazilian treaty on choice of law, a Canadian draft model law on choice of law and jurisdiction, and a U.S. proposal for a model law on the availability of consumer dispute resolution and redress. OAS member states discussed the three proposals at an initial meeting held in Porto Alegre, Brazil in December 2006. No dates have been set for future meetings, but the views of participating states have been requested.

The Department of State Advisory Committee on Private International Law (ACPIL) will hold a public meeting to review the results of the Porto Alegre meeting and to obtain views on the three proposals with regard to consumer protection.

Time: The public meeting will take place at the Department of State, Office of Private International Law, 2430 E Street, NW., Washington, DC on Wednesday October 31, 2007 from 10 a.m. to 3 p.m. EST. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Trisha Smeltzer to receive the conference call in number and the relevant materials (the Brazilian proposal for a treaty on choice of law, the Canadian proposal for a model law on jurisdiction and choice of law, and the U.S. proposal for a model law on the availability of consumer dispute resolution and redress.)

Public Participation: Advisory Committee Study Group meetings are open to the public. Persons wishing to attend should contact Trisha Smeltzer at *smeltzertk@state.gov* or at 202–776–8423 and provide your name, mailing address, e-mail address, and affiliation(s) no later than October 29th. Since access to the building is controlled, clearance for admission to the meeting will be needed. Additional meeting information can also be obtained from Ms. Smeltzer. Persons who cannot attend but who wish to comment on any of the proposals are

[22] 17 CFR 200.30–3(a)(12).

welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov*.

Dated: October 12, 2007.

David Stewart,

Attorney-Adviser, Office of the Legal Advisor, Office of Private International Law, Department of State.

[FR Doc. E7–20647 Filed 10–18–07; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5961]

Department of State Performance Review Board Members (for Non-career Senior Executive Employees)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (for Non-career Senior Executive Employees):

Carrie B. Cabelka, Under Secretary for Management, White House Liaison, Department of State;

Brian F. Gunderson, Chief of Staff, Office of the Secretary, Department of State.

Dated: October 9, 2007.

Harry K. Thomas,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. E7–20643 Filed 10–18–07; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–37]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 8, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–29191 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility 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 the Docket Management Facility 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.

SUPPLEMENTARY INFORMATION: 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).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 12, 2007.

Eve Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–29191.

Petitioner: Marpat Aviation, LLC.

Section of 14 CFR Affected: 14 CFR 141.39(b).

Description of Relief Sought: To allow Marpat Aviation to utilize their HU–1B, certificated in restricted category, for the purpose of conducting training under a part 141, appendix K, paragraph 7.

[FR Doc. E7–20661 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2007–28536]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seventeen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 19, 2007. The exemptions expire on October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's

complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://DocketInfo.dot.gov.*

Background

On August 31, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from eighteen individuals, and requested comments from the public (72 FR 50443). The public comment period closed on October 1, 2007, and no comments were received.

FMCSA has evaluated the eligibility of the eighteen applicants and determined that granting the exemptions to seventeen of these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation, 49 CFR 391.41(b)(3).

FMCSA is awaiting additional medical information regarding Mr. Ronald C. Vertucci, Jr. from his physician prior to issuing a final decision on his exemption application.

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These eighteen applicants have had ITDM over a range of 1 to 37 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications.

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 31, 2007, **Federal Register** Notice (72 FR 50443). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) 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 (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

There were no comments to the docket, therefore, based upon its evaluation of the eighteen exemption applications, FMCSA exempts, Stephen B. Atkinson, Thomas G. Blatchley, Jr., George T. Brawner, Anthony J. Clark, Jim E. Chester, Brian S. Fenley, Carroll D. Fetcher, James R. Hudson, Gaines E. Mathis, Thomas F. Meade, Jerry D. Schoolman, Michael Shuler, Kenneth G. Steinkamp, Mark T. Swanberg, Chad L. Udy, Jeffrey S. Volkman, and Kendall H. Wilson from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked 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. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 15, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–20651 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 10 a.m. to

11:30 a.m. (EST) on Thursday, November 15, 2007, at the Corporation's Administration Headquarters, Suite W32–300, 1200 New Jersey Avenue, SE., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than November 9, 2007, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, Suite W32–300, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on October 15, 2007.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E7–20645 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of American Buffalo Gold Proof Coin and American Eagle Gold Proof and Uncirculated Coin Price Increases

Summary: The United States Mint is adjusting prices for its American Buffalo Gold Proof Coin and American Eagle Gold Proof and Uncirculated Coins.

Pursuant to the authority that 31 U.S.C. 5111(a) and 5112(A)(7–11), & (q) grant the Secretary of the Treasury to mint and issue gold coins, and to prepare and distribute numismatic items, the United States Mint produces and issues 2007 American Buffalo Gold Proof Coins in a one-ounce version and American Eagle Gold Proof and Uncirculated Coins in four denominations with the following weights: One-ounce, one-half ounce, one-quarter ounce, and one-tenth ounce. The United States Mint also produces American Eagle Proof and 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 changing the price of these coins to reflect the increase in value of the underlying precious metal content of the coins—the result of increases in the market price of gold.

Accordingly, effective October 12, 2007, the United States Mint will commence selling the following 2007 American Eagle Proof and Uncirculated Gold Coins and the 2007 American Buffalo Gold Proof Coin according to the following price schedule:

Description	Price
American Buffalo Gold Proof Coins:	
One-ounce proof buffalo coin	$899.95
American Eagle Gold Proof Coins:	
One-ounce gold coin	Sold Out
One-half ounce gold coin	459.95
One-quarter ounce gold coin	239.95
One-tenth ounce gold coin	116.95
Four-coin gold set	1,695.95
American Eagle Gold Uncirculated Coins:	
One-ounce gold coin	831.95
One-half ounce gold coin	424.95
One-quarter ounce gold coin	219.95
One-tenth ounce gold coin	99.95
Four-coin gold set	1,559.95

For Further 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: October 15, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–20616 Filed 10–18–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee November 2007 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 13, 2007.

Date: November 13, 2007.

Time: Public meeting time: 9 a.m. to 11 a.m.

Location: United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review candidate designs for the Abraham Lincoln Commemorative Coin, and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: October 12, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–20615 Filed 10–18–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board will be held on December 12, 2007, at the Saint Gregory Hotel, 2033 M Street, NW., Washington, DC. The meeting is scheduled to begin at 8 a.m. and end at 5 p.m.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public from 8 a.m. to 8:30 a.m. for the discussion of administrative matters and the general status of the program. The session will be closed from 8:30 a.m. to 5 p.m. for the Board's review of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and

similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0183.

Dated: October 15, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5162 Filed 10–18–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Minority Veterans will meet November 5–7, 2007, at the Hyatt Arlington, Gallery Conference Room, 1325 Wilson Boulevard, Arlington, VA. On November 5 and 6 the sessions will be from 7:30 a.m. to 4:30 p.m. and on November 8 from 7:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meetings those needs. The Committee will make recommendations to the Secretary regarding such activities.

On November 5, the agenda will include briefings and updates on the Center for Minority Veterans, VA Strategic Plan, and the presentation of Certificates of Appointment to six Committee members. On November 6, the agenda will include briefings and updates on Faith-Based Initiatives, Veterans Health Administration, Mental Health Initiatives, Homeless Veterans Program, Center for Women Veterans, and Statistics of Minority VA Employees. On November 7, the agenda will include briefings and updates on the Veterans Benefits Administration, Office of Research and Development, National Cemetery Administration, Small and Disadvantaged Business Utilization. The agenda will also include an OEF/OIF "Soldier to Veteran" panel. On November 8, the agenda will include a briefing and update on collaboration between VA and the Indian Health Service. The Committee will also review and analyze comments presented during the meeting and will discuss future site visits and areas of focus.

Any member of the public wishing to attend should contact Ms. Juanita J. Mullen, at the Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Mullen may be contacted either by phone at (202) 461–6191, fax at (202) 273–7092, or e-mail at *Juanita.mullen@va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: October 15, 2007.

By Director of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5163 Filed 10–18–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on OIF/OEF Veterans and Families; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on OIF/OEF Veterans and Families will meet on November 6–8, 2007, at the Capitol Hilton Hotel, 1001 16th Street, NW., Washington. On November 6, the session will be from 9 a.m. to 4 p.m. On November 7, the session will be from 2 p.m. to 4:30 p.m. On November 8, the session will be from 2 p.m. to 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the full spectrum of health care, benefits delivery and related family support issues that confront servicemembers during their transition from active duty to veteran status and during their post-service years. The Committee will focus on the concerns of all men and women with active military service in Operation Iraqi Freedom and/or Operation Enduring Freedom, but will pay particular attention to severely disabled veterans and their families.

The agenda for the November 6–8 meeting will consist primarily of Committee deliberations as it begins to draft an interim report to the Secretary of Veterans Affairs and consider its work and strategic plans for the future. The Committee will discuss its findings and observations based on previous Committee meetings, site visits, written reports and personal experiences.

The meeting will include time reserved for public comments. Individuals wishing to make oral statements must pre-register not later than November 2, 2007 by contacting Tiffany Glover by e-mail at *tiffany.glover@va.gov* and by submitting a 1–2 page summary of their statements for inclusion in the official record of the meeting. Oral statements by the public will be limited to five minutes each and will be received at 4 p.m.–4:30 p.m. on November 7 and 8. The public may also submit written statements for the Committee's review to the Advisory Committee on OIF/OEF Veterans and Families (008), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Anyone seeking additional information should contact Ronald Thomas, Esq., Designated Federal Officer, at (202) 273–5182.

Dated: October 12, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5161 Filed 10–18–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
October 19, 2007

Part II

Department of Housing and Urban Development

24 CFR Parts 3280 and 3285
Model Manufactured Home Installation Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3285

[Docket No. FR–4928–F–02]

RIN 2502–AI25

Model Manufactured Home Installation Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes new Model Manufactured Home Installation Standards (Model Installation Standards) for the installation of new manufactured homes and includes standards for the completion of certain aspects necessary to join all sections of multi-section homes. The National Manufactured Housing Construction and Safety Standards Act of 1974 requires HUD to develop and establish Model Installation Standards after receiving proposed installation standards from the Manufactured Housing Consensus Committee (MHCC). HUD received and reviewed the MHCC's recommended proposed model installation standards and published a proposed rule for public comment. Based on HUD's review of the comments that were submitted, including those from the MHCC, a number of revisions to the proposed rule have been made in this final rule. This final rule also incorporates certain amendments to definitions contained in the Manufactured Home Construction and Safety Standards (MHCSS) that are affected by definitions provided in the Model Installation Standards.

DATES: *Effective Date:* The effective date for this final rule will be October 20, 2008. The date of approval by the Director of the Federal Register for incorporation by reference of certain publications listed in this rule is October 20, 2008.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number (202) 708–6401 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 2005, HUD published in the **Federal Register** at 70 FR 21498 a proposed rule that would establish Model Manufactured Home Installation Standards (Model Installation Standards) for new manufactured homes, as required by the National Manufacture Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act). The Act gave the MHCC responsibility to develop and submit to the Secretary proposed Model Installation Standards. The MHCC's proposal was provided to HUD in September 2004. The Department agreed with most of the proposal, and thoroughly involved the MHCC in the process by which the proposed rule for the Model Installation Standards was developed prior to its publication in the **Federal Register**.

There were a total of 101 commenters on the April 26, 2005, proposed rule. Seventy-seven of the commenters were from the industry, including manufacturers, component suppliers, retailers, installers, realtors, trade associations, and community operators. Nineteen commenters came from the government, including HUD-approved Primary Inspection Agencies and State Administrative Agencies. Finally, four commenters were individual consumers and consumer groups and one was a private code organization.

Among the recommendations most often made by the commenters were: (1) To codify the Model Installation Standards in existing part 3280 rather than new part 3285, in the belief that the installation standards would thereby become "preemptive" of state and local installation standards; (2) to make the installation standards applicable to secondary or other subsequent installations of manufactured homes; (3) to include provisions assuring that HUD will consult with the MHCC on future changes to the installation standards; (4) that manufacturers' installation instructions be considered as evidence of compliance with the Model Installation Standards; (5) that the installation standards apply to the joining together and close-up of multi-section homes and to certain other aspects of on-site completion that HUD had originally treated as part of the construction process. HUD has given these subjects particular attention in preparing the final rule.

II.A. Analysis of Public Comments—Part 3280

Comment: § 3280.302 Definitions. Two commenters wrote that the proposed definition of anchoring system should include forces on the foundation and anchorage systems, which may actually control the design in some instances.

HUD Response: The definition of anchoring system includes a reference to the forces that are required to be resisted by foundation and anchorage systems.

II.B. Analysis of Public Comments—Part 3285

Subpart A—General

Comment: § 3285.1(a) Scope. The Model Installation Standards should be preemptive of state and local requirements.

HUD Response: HUD has concluded that a plain reading of Sections 604(d) and 605 of the Act indicates that Congress did not intend for these Model Installation Standards to be preemptive of more stringent state or local government requirements, only that they establish minimum national requirements for the installation of manufactured homes. This conclusion is strengthened by the statement from then-Chairman Jim Leach during his section-by-section comments on the floor of the House, that "the bill would reinforce the proposition that installation standards and regulations remain under the exclusive authority of each state." (Dec. 5, 2000, 146 Cong. Rec. H11987). In earlier floor remarks, then-Ranking Member John LaFalce said, "States that wish to have their own installation standards may continue to do so, as long as they provide protections comparable to the model standards." (Oct. 24, 2000, 146 Cong. Rec. H10685). HUD therefore believes that Congress has permitted any state that chooses to operate its own installation program to enforce installation standards more stringent than these Model Installation Standards, provided that those standards otherwise offer protection that equals or exceeds the-minimum protection established by these Model Installation Standards.

Comment: § 3285.1(a) Scope. The Model Installation Standards should be codified under 24 CFR part 3280, Manufactured Home Construction and Safety Standards.

HUD Response: Contrary to the views expressed by some commenters, preemption authority can only come from Congress, and no decision that HUD could make regarding the codification of these Model Installation Standards could increase or diminish that authority. However, as indicated above, HUD believes there is good reason to conclude that Congress did

not intend to extend preemption authority to these Model Installation Standards.

In any event, HUD has chosen, as a matter of administrative necessity, to codify these Model Installation Standards, as in new part 3285 of 24 CFR, in order to maintain the clear distinctions the Act makes between installation and construction. The regulatory structure that Congress has given HUD for enforcement of these Model Installation Standards is entirely different from the enforcement authority it previously gave HUD for the federal MHCSS. As HUD reads the Act, section 613 (42 U.S.C. 5412) and section 615 (42 U.S.C. 5414), the principal sections requiring notification and correction of defects, do not apply to these Model Installation Standards. As HUD reads the Act, the primary enforcement authority for these Model Installation Standards is instead limited to section 605 (42 U.S.C. 5404) itself, which not only provides more limited authority for these Model Installation Standards, but also adds entirely new requirements regarding the licensing and training of installers.

Given these fundamental differences between the installation and construction and safety programs, publication of these Model Installation Standards in new part 3285 of 24 CFR will best allow HUD to maintain the regulatory separation necessary to administer two such different programs.

Comment: § 3285.1(a) Scope. Work associated with the joining together and close-up of sections of multi-section homes and certain aspects of on-site completion should be considered as installation of the home and not as construction.

HUD Response: Under the final rule, work necessary to join sections of a multi-section home, such as work identified in Subparts G, H, and I of the installation standards, and work associated with connecting exterior lights, ceiling-hung light fixtures, or fans, as identified in Subpart I, are treated as installation, and therefore is subject to these Model Installation Standards and any future requirements of the installation program regulations. Accordingly, close-up work completed on-site would require inspection under the Manufactured Home Installation Program Proposed Rule published in the **Federal Register** on June 14, 2006. However, features such as penetrated hinged roofs, high-pitched hinged roofs, and eave construction will remain subject to the MHCSS and the Procedural and Enforcement Regulations in 24 CFR part 3282.

In early drafts of these Model Installation Standards, HUD treated all activities associated with close-up as part of construction of the home and, as such, subject to the MHCSS and the manufacturer's certification label. However, HUD recognizes that installers, not manufacturers, typically perform close-up work. Therefore, HUD has concluded that the Model Installation Standards provide the best opportunity to address close-up activities and concerns.

Further, under the final rule, home purchasers generally will look to installers or retailers who often employ or contract with installers to perform home installations, to remedy close-up problems that are not the result of inadequate or incorrect manufacturer instructions or of production errors that have resulted in the sections of the home not fitting together properly.

Comment: § 3285.1(a) Scope. Compliance with the Manufacturer's Installation Instructions should be accepted as compliance with the Model Installation Standards. Several commenters also recommended the section be rewritten as follows: "The manufacturer's installation instructions shall apply under any of the following conditions where they do not take the home out of compliance with the Federal Manufactured Housing Construction and Safety Standards: (1) To items not covered by this standard; (2) Where the manufacturer's approved installation instructions provide a specific method of performing a specific operation or assembly; (3) Where the manufacturer's approved instructions exceed this standard."

HUD Response: § 3285.1(a) of the final rule recognizes that the Model Installation standards serve as the basis for the manufacturer's installation instructions and accepts those instructions for compliance, as long as they meet or exceed the minimum requirements of the Model Installation Standards and do not take the home out of compliance with the MHCSS. However, the methods for performing operations that are included in a manufacturer's installation instructions will be enforced by the Department, in their entirety.

Furthermore, the final rule requires that manufactured home manufacturers include installation instructions with each new home. The instructions must be approved by a Design Approval Primary Inspection Agency (DAPIA) and must provide protection to the residents of manufactured homes that equals or exceeds the protections provided by the Model Installation Standards.

Comment: § 3285.1(a) Scope. The Model Installation Standards should be applicable to subsequent installations beyond the initial siting and placement of the manufactured home.

HUD Response: It is HUD's position that Congress intended the installation standards to be applicable only to the initial installation of new manufactured homes, as indicated by references in Section 623(g) of the Act to the date of installation and by the definition of "purchaser" as the first purchaser in Section 603 of the Act. A very small percentage of manufactured homes are ever relocated after the initial siting and placement of the homes. The Manufactured Home Procedural and Enforcement Regulations encourage states to establish procedures for the inspection of used manufactured homes and for monitoring of the installation of manufactured homes within each state (§ 3282.303), thus indicating the regulations' intent to place the supervision of re-installments in the hands of the states.

The final rule does not prevent state and local governments from enforcing standards for installations after the initial installation or from imposing higher installation standards than are required by HUD's "minimum" Model Installation Standards for the initial or any subsequent installation of a manufactured home. State standards for initial installation must meet or exceed HUD's minimum installation standards, while state standards for secondary installations do not have to adhere to the minimum HUD standards. HUD continues to believe that any subsequent installation of a manufactured home best resides with state authority. Notwithstanding all of the above, HUD will continue to study this issue in developing the final rule for its installation program regulations.

Comment: § 3285.1(c) Consultation With the Manufactured Housing Consensus Committee. The Manufactured Housing Consensus Committee (MHCC) should have a continuing involvement in revising the installation standards.

HUD Response: HUD agrees with comments received from the MHCC and others that the Committee should have a continuing role in reviewing and recommending future changes to the Model Installation Standards. HUD recognizes the valuable guidance and assistance provided by the MHCC throughout the rulemaking process with the development of these installation standards. Accordingly, a new section, § 3285.1(c), "Consultation with the Manufactured Housing Consensus Committee," has been included in the

final rule. That section provides that HUD will afford the MHCC with a 120-day opportunity to offer input and comment prior to proposing any changes to the installation standards. The new provisions also direct the MHCC to send its own suggested changes to the Department at least every 2 years. The final rule also provides that HUD will accept, modify, or reject each recommendation and explain to the MHCC the reasons behind any modifications or rejections of those recommendations before publication of any new revised standard.

Comment: 3285.1(d) Administration. One commenter wrote that certain permanent site-built foundations with manufacturer certification are not subject to the proposed rule. This recognizes that site-built foundations under state and local codes are suitable and that all localities have such codes. It also implies that state and local codes for non-permanent foundations are lacking and that HUD needs to intervene. This does not make sense, unless there is a significant difference between permanent and non-permanent foundation requirements and their administration and enforcement.

HUD Response: This provision stems from Section 604(f) of the Act and 24 CFR part 3282.12 of the Manufactured Home Procedural and Enforcement Regulations, which require HUD to exclude from coverage any structure which, among other things, is designed to be erected and installed upon a site-built permanent foundation.

Comment: §§ 3285.2, 3285.301(b), 3285.401 HUD Question: Should the Model Installation Standards offer more performance-based equivalents instead of prescriptive requirements to facilitate the use of alternative installation methods?

HUD Response: Based on the recommendations of the MHCC and the public comments, the final model installation standards are a combination of prescriptive and performance standards. While the minimum standards do offer prescriptive methods for compliance, they also provide for alternatives in design that will allow for innovation. Accordingly, manufacturers' instructions may be based on either the minimum requirements in these model installation standards or may use performance-based design in demonstrating compliance with these standards.

Comment: § 3285.2 Manufactured Installation Instructions/HUD Question. Should model-specific plans for installation be required and, if so, what minimum information should be required on the plans (i.e., pier capacities, minimum support and anchorage locations, other structural design requirements, plan-specific information for completion of utility systems, etc.)?

Comment: This should be left up to each manufacturer to decide.

Comment: There is no need to require model-specific home plan criteria for every conceivable single or multi-section home design as there must be some reliance on the manufacturer's installation manual for model-specific home designs as the model standard is the minimum necessary requirements.

Comment: There is no need to require model-specific plan criteria for every conceivable floor plan and design under the Model Installation Standards. If there needs to be specialized criteria, the manufacturer can provide it in the installation manual that comes with the new home. The DAPIA will determine whether the specialized manufacturer's manual has met or exceeds the Model Installation Standards. With regard to § 3285.403, the best alternative might be to permit the mating line anchorage/connection to be determined by the manufacturer's installation manual.

HUD Response: HUD has decided that model-specific foundation plans are not required, but that special foundation and anchorage plans are required to address site-specific conditions or when the support and anchorage methods in the manufacturer's installation instructions are not suitable and vary from those included with the manufacturer's installation instructions.

Comment: § 3285.2 Manufactured Installation Instructions/HUD Question. Should the manufacturer's installation instructions provide that a professional engineer or registered architect must be consulted when general site conditions are not covered by the installation instructions?

Comment: When instructions do not address specific site conditions and hazards, the foundations and anchorage should be designed by a professional engineer or registered architect.

Comment: There is no reason for the Model Installation Standards to require that a professional engineer or architect be consulted for site preparation, if the manufacturer's manual does not cover this installation consideration. Such a requirement could substantially raise the cost of site preparation for the retailer/installer.

Comment: It is not reasonable to expect the manufacturer to effectively give installation instructions and assume liability when they have no site-specific knowledge. "A registered engineer is the right call."

Comment: The only way to get efficient and consistent installation compliance with both the Model Installation Standards and the manufacturer's support requirements is to require manufacturers to take responsibility for the vertical support of their own designs and to provide foundation plans with all pier locations and minimum pad sizes specified and drawn to scale, in a graphical format serviceable for both the permit process and the foundation layout at the jobsite.

Comment: All engineered foundations should be designed per SEI/ASCE 7, Loads for Buildings and Other Structures. This will allow engineers and architects to develop foundation designs that are capable of resisting all natural hazards at the site.

Comment: Experience has shown that out-of-state registered professional engineers and architects unfamiliar with the conditions of the locality design foundation systems that fail, and that the engineer or architect should be registered in the state where the home is to be installed.

HUD Response: Section 3285.2(c) of the final rule has been revised specifically to allow for variations to be made to installation instructions for site conditions that are not covered, provided that installers first attempt to obtain those variations for site-specific conditions from the manufacturer and, if not available from the manufacturer, the installer is to use designs prepared by a professional engineer or registered architect. The installer must have the professional engineer's or registered architect's design approved by the manufacturer and its DAPIA prior to installation. DAPIA approval is necessary to enable HUD to enforce such modifications to the manufacturer's installation instructions. HUD has determined that the Model Installation Standards do not need to require that professional engineers or registered architects be licensed in the state where the home is to be installed, since they are responsible for only performing work or preparing designs in areas of construction in which they are competent and knowledgeable. However, a state that operates its own installation program may require that the engineer or architect be specifically licensed by that state.

Comment: HUD requested comments on the efforts associated with checking installation instructions. One commenter wrote that since installation instructions vary by manufacturer and model, the estimates of number of respondents and responses per respondent were very low, while the number of hours spent on review was

high, unless the time includes back-and-forth communication. If HUD does not intend to take action to ensure conformity with the Model Installation Standards (MIS), there is no need to collect this data.

HUD Response: This issue will be addressed under the installation program regulations and any adjustments to the burden estimates will be made as part of those regulations.

Comment: Section 3285.4 Incorporation by Reference. There is a more recent edition of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Fundamentals Handbook and the Underwriters' Laboratories (UL) 181 standard has been separated into UL 181, 181A, and 181B.

Comment: Add the American Wood Preservers Association (AWPA) to the list of Referenced Publications. AWPA Publications, American Wood-Preservers' Association, P.O. Box 388, Selma, AL 36702. AWPA U1–04, Use Category System: User Specification for Treated Wood, 2004, and AWPA M4–02, Standard for the Care of Preservative-Treated Wood Products, 2002 The references to treated wood standards need to be updated because: (1) AWPA C2 and C9 are no longer updated by AWPA and will not include new preservative treatments that are appropriate for this application; (2) Standard U1 is currently referenced in the 2004 amendments to the 2003 International Building Code (IBC) and International Residential Code (IRC) in place of standards C2 and C9 and will be referenced in the 2006 editions; and (3) the 0.60 lbs. per cubic foot is not the required retention level for all of the appropriate preservatives. Copper azole (CA–B) has a required retention of 0.31 lbs. per cubic foot for this application that is equivalent to Chromated Copper Arsenate used at 0.60 lbs. per cubic foot.

HUD Response: The editions of these standards that are adopted in this final rule are consistent with those recently updated by HUD in recent amendments to the Manufactured Home Construction and Safety Standards. HUD will consider issuing conforming amendments to more recent editions of these standards in future rulemaking.

HUD also agrees there is a need to update and revise the reference requirements for treated wood materials, and the final rule incorporates the more recent AWPA U1–04 and AWPA M4–02 standards into certain sections of the installation standards (§§ 3285.4, 3285.303, 3285.312, and 3285.504).

Comment: § 3285.5 Definitions. "Design Flood." The term "design flood" is used several times in the proposed rule and should be defined as the greater of either: (1) The base flood or (2) the flood so designated by the Local Authority Having Jurisdiction (LAHJ) as its regulatory flood, with a one percent chance or less of being equaled or exceeded in any given year.

Comment: The term "design flood elevation" (DFE) should be added to the definitions as follows: "Design Flood Elevation. The elevation of the design flood, including wave height, relative to the datum specified on a LAHJ's hazard map."

Comment: § 3285.5 Definitions. "Lowest-Floor." The definition of Lowest Floor should be revised, as follows: "Lowest floor. The floor of the lowest enclosed area of a manufactured home. For flood-resistant design purposes of these MIS, the term "lowest floor" shall mean the bottom of the longitudinal chassis frame beam in A zones, and the bottom of the lowest horizontal structural member supporting the home in V zones. An unfinished or flood resistant enclosure, used solely for vehicle parking, home access, or limited storage, must not be considered the lowest floor, provided the enclosed area is not constructed so as to render the home in violation of the flood related provisions of this standard."

HUD Response: Section 3285.102 of the final rule clarifies that the above terms are used as defined in 44 CFR part 59.1 of the National Flood Insurance Program and, as such, are not required to be again defined in these installation standards.

Comment: § 3285.5 Definitions. "Labeled" and "Listed or certified." The term "labeled" is very similar to the term "listed or certified," except that "listed or certified" requires that an approved product be on a published list. All of these terms could be read to require the contracting of an agency on a continuing basis to maintain product approval status rather than using a nationally recognized third-party testing agency for a one-time approval.

HUD Response: Both terms remain in the final rule because certain components may not be required to be labeled but must still be listed under the purview of a nationally recognized testing laboratory.

Comment: § 3285.5 Definitions. "Crossovers." The definition of crossovers should be amended to include ducting for both heating and cooling ducting, and not just ducting for heating.

HUD Response: As recommended by the commenters, the final rule includes both heating and cooling ducts in the definition of "crossovers."

Comment: § 3285.5 Definitions. "Local Authority Having Jurisdiction (LAHJ)." The definition of LAHJ should be rewritten to refer to local responsibilities in such a way that if they are within the coverage of the Model Installation Standards (MIS) they are applicable, but if outside the MIS they are not applicable.

Comment: Having states included within the definition of an LAHJ seems to conflict with other provisions of the rule and means that a state or local government entity that does not have such requirements, even though they may be identical to the MIS, would not be considered an LAHJ. One commenter wrote that no level of government below the state level should be included in the definition of an LAHJ, because it implies that lower levels of government's programs are sanctioned, which could result in the imposition of additional fees, thereby causing increased costs for consumers.

HUD Response: The definition is essentially unchanged in the final rule because any entity or subdivision of state government is not restricted from establishing more stringent requirements than those in the MIS for states in which HUD will operate the installation program. The proposed rule for the installation program regulations in 24 CFR part 3286 includes detailed provisions for state-run installation programs and how those requirements will impact on local governmental entities within their state. However, the definition has been modified in the final rule to clarify that an LAHJ must have both responsibilities and requirements that must be complied with during the installation of a manufactured home.

Comment: § 3285.5 Definitions. "State." The "Canal Zone" should be deleted from the definition of "State," because the Panama Canal Zone has not been under United States control or jurisdiction for nearly 30 years. emsp;

HUD Response: HUD has removed "the Canal Zone" from the definition of "State," but recognizes that the statute has not been amended or updated to reflect this change.

Comment: § 3285.5 Definitions. "Foundation." The term "foundation" should be a defined term in the MIS.

HUD Response: A definition for a "foundation system" has been included in the final rule in both the Manufactured Home Construction and Safety Standards and the MIS.

Subpart B—Pre-Installation Considerations

Comment: Seismic Safety/HUD Question: Should the MIS attempt to set forth minimum installation

requirements or pre-installation considerations to address seismic safety? If so, how should HUD establish seismic zones and what minimum requirements would be included in the Model Installation Standards?

Comment: If seismic zones are to be considered in the future as a manufactured home design parameter, it is best that they first be introduced into part 3280 and then mentioned in set-up manuals.

Comment: Part 3285 contains no criteria to protect homes from earthquakes, and this omission makes the standard incomplete. Other national consensus standards have seismic criteria, such as the IBC, the IRC, the National Fire Protection Association (NFPA) 5000 Building Construction and Safety Code, and the NFPA 225. Manufactured homes fall off this type of support at very moderate ground shaking levels, since such homes are typically installed using piers not designated for seismic resistance, which are not adequately attached and connected to the foundation and chassis of the home. This lack of seismic resistant provisions will result in significantly less protection than in other types of residential construction, and is technically inadequate in areas of high seismic activity. Congress authorized the Earthquake Hazard Reductions Program to develop seismic safety provisions suitable for use throughout the United States. The lack of seismic provisions is contrary to national policy. The approach for seismic detailing and design in NFPA 225 should be accepted and used in part 3285.

Comment: HUD should not include any seismic requirements in the Model Installation Standards. When required, designs are handled by the retailer, the installer, the owner, or the manufacturer, in accordance with the requirements of the local building authority. This is working now and need not be covered in the installation standards.

HUD Response: The final rule does not contain specific requirements for the design of foundation and anchorage systems in seismically active areas. This will allow states and local building code authorities in seismically active areas to establish or continue to enforce foundation and anchoring requirements for seismic design load considerations. However, HUD intends to continue to study this issue and may recommend requirements for seismic design in future rulemakings in the Manufactured Home Construction and Safety Standards and the Model Installation Standards.

Comment: § 3285.101 Installation of Manufactured Homes in Flood Hazard Areas. The requirements for installation of manufactured homes in flood hazard areas should be included in Subpart D Foundations, § 3285.302, rather than in § 3285.101(d). While § 3285.101 requires the installer to determine if flood hazards affect the site, it is more appropriate that more explicit design considerations be articulated in the section on foundations.

Comment: States and communities in areas that are vulnerable to flood damage should adopt regulations that exceed the minimum National Flood Insurance Program (NFIP) requirements.

Comment: The approach indicated in the proposed Model Installation Standards was considered and rejected by NFPA 225. Basic performance requirements related to floods can and must be included in the Model Installation Standards, and doing so will not conflict with, replace, or preempt NFIP and LAHJ flood requirements.

Comment: Method and Practices. Manufactured homes located wholly or partly within special flood hazard areas must be installed using methods and practices that minimize flood damage during the base flood, including elevation and stability of the foundation for anticipated conditions and loads in accordance with the LAHJ; 44 CFR 60.3(a) through (e), as applicable; and other provisions of 44 CFR referenced by those paragraphs.

Comment: Section 3285.101(c) should be revised to read as follows: "(c) Pre-installation considerations. Prior to the initial installation of a new manufactured home, the installer is responsible to determine whether the manufactured home site lies wholly or partly within a special flood hazard area as shown on the LAHJ's Flood Insurance Rate Map, Flood Boundary and Floodway Map, or Flood Hazard Boundary Map. If so located, the map and supporting studies and requirements adopted by the LAHJ or state should be used to determine the flood hazard zone and design flood elevation at the site. If the LAHJ has not adopted a Flood Hazard Map, the installer shall consult the LAHJ to determine flood-resistant installation requirements."

Comment: § 3285.101(d) Installation of Manufactured Homes in Flood Hazard Areas. LAHJs should be given the option to enforce requirements for flood hazards at whatever level they deem necessary. The section should provide two options for flood hazard criteria: (1) Per the LAHJ or (2) per the NFIP regulations.

Comment: Paragraph (d)(2) should be renumbered as (d)(3) and a new section (d)(2) should be added, as follows: "Performance requirements. Manufactured home installations shall: (a) Have the lowest floor elevated to or above the design installation; (b) elevate the home using support and anchorage systems designed and constructed to resist design flood loads in combination with other storage loads; (c) construct the support and anchorage system with flood damage resistant materials; (d) in A zones, use flood openings in permanent foundation walls and in other solid walls (excluding skirting) forming an enclosure below the DFE, to allow the automatic equalization of flood levels; and (e) in V zones, elevate the home on piles, columns, piers, or stands that minimize obstructions below the DFE, and use breakaway construction for any other non-structural walls or elements."

Comment: Fill is often used as a method to elevate sites so that the lowest floors of manufactured homes are elevated to or above the design flood elevation. While compaction of fill used to elevate a manufactured home site is an important consideration, there are other particular considerations that are important so that flood conditions do not adversely affect the fill. In particular, it is recommended that the fill be sloped and protected with vegetation to minimize erosion that may undermine the home. This can be accomplished by adding § 3285.101(d)(2) to read as follows: "Installation on fill. Fill placed in flood hazard areas in order to elevate manufactured home sites shall be placed, compacted, and sloped to minimize shifting, slumping, and erosion during the rise and fall of floodwater."

Comment: A new paragraph, § 3285.101(e), should be added to read as follows: "Alternate Flood-Resistant Installation Provisions. The flood-resistant installation provisions contained in NFPA 225 shall be deemed to equal or exceed the flood requirements of the Model Installation Standards."

Comment: The only way to prevent flood damage is by elevating the home above the flood level on strong and durable stabilizing devices. Performance requirements to prevent flood damage must be included if the Model Installation Standards are to be effective.

HUD Response: The final rule continues to reference the provisions of 44 CFR 60.3(a) through (e) and Federal Emergency Management Agency (FEMA) 85, Manufactured Home

Installation in Flood Hazard Areas, as appropriate guidance for installation of manufactured homes in areas subject to flooding. A state or local community may adopt more stringent performance requirements than those specified under the Model Installation Standards for flood hazard areas.

Comment: § 3285.102 Design Zone Maps. The design and construction of the foundation and anchoring systems addressed in part 3285 should be compatible with the design and construction of the home, but should not be restricted or limited by the outdated and obsolete design zone maps contained in part 3280.

Comment: This section should require that a manufactured home cannot be installed in a higher wind zone, snow load, or thermal zone than the home's original design for its initial installation.

Comment: The referenced design maps identified in part 3280 should be included in this section.

HUD Response: Section 3285.103(a) of the final rule requires that prior to the initial installation of a new manufactured home, the installer verify that the design and construction of the home, as indicated on the design zone maps provided with the home required by the Manufactured Home Construction and Safety Standards and regulations, are suitable for the site location where the home is to be installed.

Subpart C—Site Preparation

§ 3285.201 Soil Conditions/HUD Question. HUD sought comment on whether the standards should require that a minimum of six inches of soil, including the organic material, be removed under load bearing footings to ensure that footings are placed on undisturbed soil for at-grade footings.

Comment: This would seem like a good practice in general to avoid detrimental effects to foundation support and anchoring systems; however, to specify a minimum depth of six inches of soil be removed may in some cases be too little or in other situations too excessive. To address this concern, the commenters recommend that the section be revised to indicate that topsoil is to be removed or that at-grade footings should be installed on undisturbed soil.

HUD Response: HUD finds the comment to be reasonable, and the final rule does not specify a required depth of soil removal, thereby leaving the determination of firm, undisturbed soil as a site-specific matter.

Comment: § 3285.202 Soil Classifications and Bearing Capacity. The pocket penetrometer should be included as an acceptable method to determine soil-bearing capacity. While penetrometers are not as precise a method for determining soil-bearing capacity at an individual location, they have proven to be workable devices where multiple readings are taken at an installation site.

Comment: The proposed rule should offer a default approach to determine the soil bearing capacity such as permitted by other model codes. This default approach used in some state and model building codes, such as the 2003 International Residential Code, generally recognizes a minimum soil bearing capacity of 1500 pounds per square foot (psf).

HUD Response: The final rule now allows the use of the pocket penetrometer as one of the acceptable methods for determining soil classification and bearing capacity and permits the use of a 1500 psf soil bearing capacity, unless site-specific information requires the use of lower values based on soil classification and type.

Comment: § 3285.203(a) Drainage. The section should be revised to read as follows: "Drainage must be provided to direct surface water away from the home." This was suggested because the commenter believed it unnecessary to include a "laundry list" of possible problems, if proper drainage was not provided, that was identified in the proposed rule.

Comment: As written, subsection (b) would be impossible to enforce within rental communities given their layout and design. The requirement should be revised to provide an exemption for homes sited within manufactured home rental communities, or by changing the drainage requirement "from under" to "away from" the home. Further, in subsection (c) the first 10-foot provision would be impossible to enforce in rental communities, since lots only provide for 5-foot sideyards and that the requirement should be revised to require drainage away from the foundation of the home for the first 5 feet.

HUD Response: The final rule has been revised to clarify that surface water must be directed away from the home to prevent water build-up under the home. Where property lines do not allow the drainage to be diverted for the first 10 feet from the foundation, other methods are allowed to remove the surface water. However, statements on the adverse affects of not removing the water have been removed from this section, as suggested by commenters.

Comment: § 3285.203(f) Gutters and Downspouts. Most home manufacturers do not provide additional support in the roof system in order to support gutters and downspouts. Installation could cause damage and take the home out of compliance with the MHCSS. However, if gutters and downspouts are provided, the runoff must be directed away from the manufactured home.

Comment: Even though the Model Installation Standards require any runoff from gutters and downspouts to be diverted away from the home, not all HUD Code homes are required to have gutters and downspouts. If gutters and downspouts are provided, then installers should be required to ensure that adequate drainage is provided.

HUD Response: The final rule has been revised to require manufacturers to specify in their installation instructions whether the manufactured home is suitable for the installation of gutters and downspouts and if so provided, the instructions are also to indicate that all roof water is to be directed away from the home.

§ 3280.204 Ground Moisture Control/HUD Question: HUD is concerned that excessive voids and numerous tears in the vapor retarder can defeat the purpose of the requirement. Therefore, should limitations be placed on the number and size of voids and tears? If so, what specific limitations would be recommended?

Comment: Some commenters advocated that the Model Installation Standards should state that all tears and voids in the ground vapor retarder be repaired. Others raised questions as to what would constitute a minor tear or void, as indicated in the proposed rule; how many tears or voids would be acceptable without repair; and how the regulation would be consistently enforced by states. The commenters also suggested this was one situation where a prescriptive provision is warranted in the standards.

Comment: As it would be difficult to repair tears or defects in the ground vapor retarder around piers, the requirement should be revised to not require minor tears and voids at pier locations or other support to be repaired.

Comment: The ground vapor retarder should be overlapped at least 12 inches at all joints to prevent weeds and grass from growing through deck slats, and to minimize the likelihood of moisture penetration.

Comment: The reference to a six millimeter polyethylene is a typographical error in § 3285.204(b). A six millimeter polyethylene ground vapor retarder would be .039" thick, as opposed to the six mil polyethylene that

was intended, which would be .006" thick.

Comment: Ground vapor retarders should be required only in enclosed areas and paragraph (a) should be revised to read as follows: "(a) If space under the home is to be enclosed with skirting or other material, a vapor retarder is required in the following situations: (1) In humid regions (this region is considered to follow the very heavy termite infestation probability map, reference in the HUD Sept., 1996 PFGMH); (2) in situations where the crawlspace soil elevation is below the natural surrounding surface elevation (i.e., pit set applications); (3) in installations where concrete decks, retaining walls or other solid barriers prevent venting on more than one side (refer to § 3285.505)."

HUD Response: Section 3285.204 of the final rule does not permit any voids or tears in the ground vapor retarder, requires all joints to be overlapped at least 12 inches, and allows the vapor retarder to be installed around or over footings and other obstructions, as suggested by the commenters. The final rule also corrects the typographical error in the proposed rule in paragraph (b) by requiring the thickness of the vapor retarder to be a minimum of six mil polyethylene sheeting. The final rule also clarifies that all enclosed and skirted areas are to be provided with a ground vapor retarder, except in arid regions and areas for open porches, decks, and recessed entries.

Subpart D—Foundations

Comment: § 3285.301(b) Alternative Foundation Systems. The requirement that foundations that are not of the pier and footing type are to be designed by a professional engineer increases costs to the consumer.

Comment: It is unnecessary for a professional engineer or architect to be consulted for site preparation, if the manufacturer's manual does not cover the specific conditions for the site, because every manual has been reviewed by the industry's national association and it always contains some information with regard to site preparation. If not, the LAHJ can be looked to for any other conforming requirements.

Comment: § 3285.301(b) et al. The proposed rule's requirements for "acceptable engineering practice" are too broad to ensure uniformity. As written, the commenter finds four problems with the proposed language: (1) It suggests that all aspects of design require registered professionals, (2) the standard is not specific to the design and construction of manufactured homes, (3) it is not specified where the professional has to be registered, and (4) it will increase costs because services of engineers and architects will be required for each installation rather than having the manufacturer provide the information universally. The commenter proposes to change the language to read, * * * Must be prepared by the manufacturer or by a registered professional engineer or a registered architect in accordance with the manufacturer's home design and the Manufactured Home Construction and Safety Standards (3280)." [Same comment for §§ 3285.301(d), 3285.306(c), 3285.310(c), 3285.312(c)(1) and (2), 3285.314(b), 3285.401(b) and (b)(2), 3285.402(c)]

Comment: § 3285.301(c) General. Most registered professional engineers or registered architects are not aware of the federal standards or how manufactured homes are designed and constructed. They are also unaware of critical areas of support. If the designs fail, the federal program has no authority over these outside professionals.

HUD Response: The requirements for the use of professional engineers or architects to certify various aspects of the manufacturer's installation instructions for foundation and anchoring support, including alternative foundation systems, are retained in the final rule and are no different than what is currently required for certification of this information under the Manufactured Home Construction and Safety Standards. In addition, one of the responsibilities of a professional engineer or registered architect is to understand all aspects of any design, including critical areas of support, before certifying that it complies with the appropriate standards or requirements. The installer must have the professional engineer's or registered architect's design approved by the manufacturer and its DAPIA prior to installation. DAPIA approval is necessary to enable HUD to enforce such modifications to the manufacturer's installation instructions.

Comment: Installation Instructions for Perimeter and Permanent Foundations/ HUD Question: Should manufacturers who design their manufactured homes to be installed on perimeter or permanent foundations, in addition to pier, footing, and anchor foundations, be required to also provide DAPIA-approved installation instructions for perimeter and/or permanent foundations and the pier, footing, and anchor systems?

Comment: Additional DAPIA-approved instructions for other foundation systems, including perimeter or permanent foundations, should not be required if a manufacturer has complied with either engineered plans or state-established standards for permanent foundations.

HUD Response: DAPIA-approved installation instructions are required to be provided by manufacturers under section 605(b) of the Act. The final rule indicates that foundation systems that are not of pier and anchor type configurations may also be used, when substantiated by engineering design as being capable of resisting the design loads in the Manufactured Home Construction and Safety Standards. If alternative foundation designs are not provided in the installation instructions and are desired or needed for site-specific conditions, installers are required to first contact manufacturers to obtain variations to the instructions or, if not available from the manufacturer, to use a design prepared by a professional engineer or architect (§ 3285.2(c)). The installer must have the professional engineer's or registered architect's design approved by the manufacturer and its DAPIA prior to installation. DAPIA approval is necessary to enable HUD to enforce such modifications to the manufacturer's installation instructions.

Comment: § 3285.301(a) General. The design of the foundation system should not be limited to the design loads required by the Manufactured Home Construction and Safety Standards, as indicated on the home's data plate. Presently, manufactured homes are not designed for flood loads, but foundation and anchorage systems sited in flood hazard areas should be capable of resisting flood loads. Similarly, manufactured homes are not presently designed for seismic forces, but foundation and anchorage systems installed in areas subject to earthquake forces should be capable of resisting seismic loads. To remedy the above concerns, the section should be revised to read as follows: "(a) Foundations for manufactured home installations must be designed and constructed in accordance with this subpart and must be based on site conditions, home design features, and the greater of (1) the loads the home was designed to withstand as shown on the home's data plate, and (2) design loads specified elsewhere in these Standards or by the LAHJ or state."

HUD Response: Under the final rule, states and localities are not prevented from establishing and enforcing seismic requirements or higher design requirements for foundations and anchorage to resist flood loads.

Comment: Test Protocol for Alternative Foundation Systems/HUD Question: What specific requirements should be included in the national test protocol for alternative foundation systems protocol referred to in the proposed Model Installation Standards?

Comment: It would be best to delay providing any specific considerations or testing requirements in the final rule, because the MHCC has been tasked to develop a recommended test protocol for proprietary foundation systems. Further, any proprietary system can be evaluated by a manufacturer and included, at its option, in the installation manual, subject to DAPIA approval.

Comment: Currently a de facto, nationally recognized protocol exists, which has been extensively used to evaluate most of the alternative foundation systems on the market.

HUD Response: Section 3285.301(d) of the final rule includes provisions for a nationally recognized testing protocol for proprietary foundation systems or alternatively requires proprietary foundation system designs to be prepared or tested by a registered professional engineer or registered architect. Efforts are underway by the MHCC to develop recommendations for a national testing protocol, which will be considered by the Department of Housing and Urban Development upon its completion. Presently, states that are operating an installation program have differing requirements for the testing of proprietary foundation systems, and there is no universally accepted de facto method for testing, as suggested by one of the commenters.

Comment: § 3285.302 Installation of Manufactured Homes in Flood Hazard Areas. Manufacturers should be required to either include flood-resistant considerations in their foundation specifications (and state the conditions under which the specifications are applicable in terms of specific ranges of velocities, depths, and wave action), or state that their foundation specifications do not address flood loads and shall not be used in flood hazard areas.

HUD Response: Section 3285.302 of the final rule requires that the installation instructions identify whether the foundation specifications have been designed or not designed for flood-resistant considerations.

Comment: § 3285.303(b)(1) Acceptable Piers-Material Specifications. The section should be revised to read as follows: "Piers are permitted to be concrete blocks, pressure-treated wood treated with a water-borne preservative in accordance with AWPA Standard U1 for Use Category 4B ground contact applications, or adjustable metal or concrete piers."

HUD Response: Section 3285.301(b) of the final rule has been revised in accordance with the above comment to reference a more current standard permitting the use of water-borne preservatives for pressure treatment of wood members.

Comment: § 3285.303 Piers/HUD Question: Should the Model Installation Standards include other design characteristics or standards for manufactured piers such as protection from the elements, material specifications, a testing protocol, or listing and labeling requirements?

Comment: Piers and other support or anchorage devices should be designed and constructed to resist weathering, corrosion, and deterioration with minimal maintenance and upkeep on the part of the owner. This is especially important in coastal areas where salt spray corrosion is present, and in flood hazard areas where the supports and anchorage are subject to inundation.

Comment: Manufactured piers are designed to withstand certain loads and, as long as the home manufacturer provides the loading requirements at each intended pier location, a manufactured pier that is capable of resisting those loads should be acceptable for use.

Comment: The proposed rule specifies that manufactured home piers, other than concrete masonry units or steel jack stands, be listed and labeled for the required vertical loads and appropriate lateral loads. This appears to be a performance-based requirement. There does not seem to be any reason to provide a laundry list of design conditions. HUD should maintain the status quo until some nationally recognized material/testing protocol can be developed.

HUD Response: The proposed rule did not exclude metal stands or piers from the requirement to be listed and labeled, as suggested by the commenter. This is further clarified in § 3285.308 of the final rule, which requires that any metal pier or other type of manufactured pier be listed, meet the pier load requirements of the Model Installation Standards in § 3285.303, and be protected against weather deterioration and corrosion.

Comment: § 3285.303(d) Pier Loads. The word "poured" should be deleted, as it suggests that the footers for piers loads need to be poured.

HUD Response: The term "poured" has been deleted in the final rule.

Comment: § 3285.303 Tables 1, 2, and 3. The Tables are confusing and should be simplified by retaining only the "Pier and Footing Load" column and by deleting all references to the 16″x16″ concrete footing /pyramid layout method in the Tables and by deleting Figure C to § 3285.312 in its entirety.

Comment: The footnotes in the tables should indicate that flood or seismic loads were not considered in developing the tables and that the tables should not be used in determining foundation requirements in flood hazard areas or seismic hazard areas.

HUD Response: The Tables in the final rule have been revised to delete the references to footing layouts, and Figure C to § 3285.312 has also been deleted in the final rule. A footnote has also been added to each of the Tables in the final rule indicating the Tables do not consider flood hazard or seismic design load requirements.

Comment: § 3285.304 Pier Configuration. There are a number of inconsistencies between the text in this section and Figures A and B to § 3285.306 with regard to cap thickness, size, and material callouts and specifications; shim size, use, thickness, and orientation; and gaps between the main chassis beam and foundation support system specifics.

HUD Response: Figures A and B and the text of this section have been revised in the final rule to address comments regarding inconsistencies between them in cap requirements (i.e., ½″-steel plate thickness has been used in both the text and Figures in the final rule), by requiring wood shims to be hardwood and by clarifying alternatives for filling gaps.

Comment: § 3285.305 Clearance Under Homes/HUD Question: Should the Model Installation Standards include minimum clearances in areas such as those required for access or inspection?

Comment: A minimum clearance under a home is required to install and inspect utility connections, bottom board repairs, etc. All of the area underneath a home should be accessible for that, and even if there are no utility connections in an area, bottom board repairs may still need to be made on-site.

Comment: A 12-inch minimum clearance should be maintained beneath the lowest member of the main frame and the ground under 100 percent of the home.

HUD Response: The final rule requires a minimum clearance of 12 inches under the home to the ground, including areas between the lowest point of the frame and the grade.

Comment: § 3285.306(b) Frame Piers 36 Inches to 80 Inches and Corner Piers. The MHCC and other commenters stated that mortar should not be required, unless specified in the manufacturer's installation instructions. Further, if mortar is required for all frame or corner piers between 36 inches and 67 inches in height, it would add unnecessary costs to the installation of the home.

Comment: When concrete block piers are required to use mortar, the type of mortar should be indicated in the standards.

Comment: Section 3285.306(a)(5) should be changed to read as follows: "Mortar is not required if a solid 4" cap block is placed on top of the hollow masonry blocks and the pier is not being considered as an anchoring point, unless otherwise specified in the installation instruction or required by a registered engineer or registered architect."

HUD Response: Paragraphs (a), (b), and (c) of § 3285.306 of the final rule have been revised to indicate that the use of mortar is only required when specified in the manufacturers installation instructions or required in designs prepared by a professional engineer or registered architect.

Comment: § 3285.306(b)(2). The Model Installation Standards should address offsets in piers over 36" in height and the maximum tilt of piers from vertical for piers of any height.

HUD Response: Horizontal offsets for piers over 36" and up to 67" in height are limited to 1" in § 3285.306(b)(1) of the final rule.

Comment: Figure B to § 3285.306 Typical Footing and Pier Installation, Double Concrete Block. The maximum pier height of 80 inches should be reduced to 67 inches, because the tie-down charts provided in this standard are limited to 67" and pier designs greater than 67" in height will require independent engineering designs.

HUD Response: The requirements for frame and corner pier height in Figure B and the text of the final rule have been reduced from 80 inches to 67 inches to be consistent with other tables and figures in the Model Installation Standards.

Comment: § 3285.309 Elevated Homes. Since information is provided for designing tie-downs and piers up to 67" high, the "one-fourth of the area of a home" requirement should be deleted.

HUD Response: The provisions for elevated homes have been deleted in the final rule, as recommended by the commenters. A professional engineer or registered architect would be required to prepare designs that exceed 67" in height or for other conditions not specifically addressed by these Model Installation Standards.

Comment: § 3285.310 Figures/Tables for Marriage Line Pier Supports (Generally). The manufacturer's installation manual would be easier to reference for these requirements rather than the specifications, Tables, and Figures in the proposed rule.

HUD Response: As recommended by the MHCC and others, the Tables, Figures, and specifications are needed to establish the minimum requirements and guidance needed for preparing manufacturer's installation instructions.

Comment: § 3285.310 Typical Mate-Line Column Pier and Mating Wall Support. Footnote 1 of Figure A to § 3285.310 requires all footings to extend below the frost line depth. This requirement is inconsistent with § 3285.312(c), which allows footings to be located at grade, when insulated foundation systems are used in areas subject to freezing. Instead, Footnote 1 should be revised to reference § 3285.312(c) for footing requirements in frost-heave susceptible soils. This same comment also applies to Figure B.

Comment: Figure A to § 3285.310 Typical Mate-Line Column Pier and Mating Wall Support When Frame-Only Blocking is Required and Figure B to § 3285.310 Typical Mate-Line Column Pier and Mating Wall Support When Perimeter Blocking is Required. For locations more than two feet from the perimeter of the home, the frost line depth should be one half of that required for perimeter footings, because temperatures under the home are not low enough to cause severe soil frost line conditions.

Comment: The pier capacity indicated in Footnote 3 for single dry stack concrete block piers should be reduced from 10,000 lbs. to 8,000 lbs., while another commenter recommended the capacity be reduced even further to 5,725 lbs.

Comment: Footnote 6 for Figure A and Footnote 4 for Figure B should be revised to indicate that pier or other supports are required for any opening 48" or greater at either the mate-line or the side wall.

HUD Response: Footnote 1 of the Figures A and B to § 3285.310 in the final rule have been revised to indicate that the bottom of the footings must extend below the frost line depth, unless designed for placement above the frost line. In addition, alternatives to locating footings below the frost line, such as by using an insulated foundation system, are provided in § 3285.312(b) of the final rule. Other footnotes to the figures in § 3285.310 have been revised, as recommended by the commenters to indicate that pier supports are required for any opening of 48" or greater. The footnotes to the figures have also been revised by reducing the maximum load permitted on a single stack concrete block pier from 10,000 lbs. to 8,000 lbs., as determined by HUD's analysis.

Comment: § 3285.310(b). Paragraph (b) should be revised to read, "(b) Mate-line and column pier supports must be in accordance with this subpart and consistent with Figures A through C to this section or located and sized to withstand the loads provided by the home manufacturer for the specific home."

HUD Response: Paragraph (b) has been revised in the final rule to indicate that the mate-line column and pier supports are required to be in accordance with the provisions of Subpart D, unless the pier support and footing configuration is designed by a registered professional engineer or architect.

Comment: § 3285.311 Required Perimeter Supports. Piers are not the only means of perimeter support; other means such as additional outriggers or floor joists should also be permitted.

Comment: The reference to wood stoves should be changed to fireplace stoves, since wood stoves have not been used in manufactured homes for many years.

Comment: References in § 3285.311(b) to Tables 1 and 3 should be deleted, because only Table 2 addressed the use of perimeter piers.

Comment: In recognition of mountainous areas where snow loads are greater than 40 psf, a new paragraph (c) should be added to read, as follows: "Perimeter support in accordance with manufacturer's installation instructions may be required for roof loads in excess of 40 psf."

HUD Response: Section 3285.311(a)(2) of the final rule provides for other means of perimeter support, such as by additional outriggers or floor joists, and requires the sizing of pier and footing supports to consider the additional loads from these alternative supports. The final rule has also been revised to change the term "wood stoves" to "fireplace stoves" to be consistent with the Manufactured Home Construction and Safety Standards. For roof live loads in excess of 40 psf or greater, a professional engineer or architect must determine the maximum sidewall opening that is permitted. In addition, the references to Tables 1 and 3 have been deleted in the final rule, as recommended by the commenters.

Comment: § 3285.312(b)(1)(i) Footings; Acceptable Types of Footings

Concrete/HUD Question: Should the Model Installation Standards provide minimum steel reinforcement specifications for cast-in-place footings?

Comment: There should be minimum requirements for steel reinforcement of footings to prevent footing damage or failure.

Comment: Footing design, including the amount and size of steel reinforcement, should be left up to the registered professional engineer or architect preparing the design.

Comment: Steel reinforcement specifications for cast-in-place concrete footings are not necessary for inclusion in Model Installation Standards, since these are specified by the manufacturer and would exceed the minimum standard requirements.

HUD Response: Section 3285.312(a)(1)(ii) in the final rule has been revised to indicate that site-specific soil conditions may require the use of reinforcing steel for design of cast-in-place footings.

Comment: § 3285.312(b)(1)(i) Acceptable Types of Footings. Concrete. The requirement for four-inch nominal precast concrete pads to have a 28-day compressive strength of at least 4,000 psi is inconsistent with the industry practice of using 1,200 psi. Further, there is no explanation or engineering rationale provided as to why 1,200 psi cannot be used, and 4,000 psi precast footing pads are not currently available. The standard should be set at 1,200 psi and the same revision should be made to Figure C to § 3285.312.

Comment: The word "must" should be stricken from § 3285.312(b)(1) to allow concrete footings to be either precast or poured-in-place, or both.

HUD Response: The final rule has been revised to reduce the 28-day minimum compressive strength for precast concrete footings from 4,000 psi to 1,200 psi, in accordance with the recommendations of the commenters. While the rule permits either precast or poured-in-place concrete footings, because of different settlement rates for the different types of footings, the use of both at a particular site is limited to a design approved by a registered professional architect or engineer.

Comment: § 3285.312(b)(2) Footings; Pressure-Treated Permanent Wood. This subsection should be reorganized into: (i) Physical requirements, (ii) treatment requirements, and (iii) field treatment of cut ends. The subsection, as designed and combined by the commenter, would read: "(2) Pressure-treated Wood. (i) Pressure-treated wood footings shall consist of a minimum of two layers of nominal 2" thick pressure-treated wood, or a single layer of pressure-treated plywood with a minimum thickness of three-quarters of inch and a maximum size of 16"x16", or, for larger sizes two pieces of nominal three-quarter inch thick plywood. Plywood shall be American Plywood Association-rated sheathing, Exposure 1 or Exterior in accordance with PS1. (ii) Pressure-treated lumber and plywood shall be treated with a water-borne preservative in accordance with American Wood Presservers' Association standard U1 for Use Category 4B ground contact applications. (iii) Cut ends of pressure-treated lumber shall be field treated in accordance with AWPA M4–02."

HUD Response: Section 3285.312(a)(2) of the final rule for pressure-treated wood footings has been revised, in accordance with the above recommendations.

Comment: § 3285.312(b)(3) Acrylonitrile Butadiene Styrene (ABS) Footing Pads/HUD Question: Should ABS footing pads be listed and what type of criteria should be contained in the Model Installation Standards to ensure the products are durable and can be adequately and uniformly evaluated for review and approval?

Comment: ABS footing pads should be certified for use by soil classification. ABS or other plastic type footing pads tend to deflect more in sandy soil conditions.

Comment: ABS footing pads are currently being approved and used and should be permitted under the Model Installation Standards. States should continue to be responsible for determining the appropriate criteria and approval procedures for use of ABS footing pads until a nationally recognized material/testing standard is developed.

Comment: The proposed rule does not mention that any limitations for use of ABS pads in areas subject to freezing or frost.

Comment: ABS footing pads must be approved for the permitted load and soil bearing capacity since there are no requirements for listing or labeling.

HUD Response: Section 3285.312(a)(3) of the final rule permits the use of ABS footing pads, but requires they be listed and labeled as to their load capacity and adds the requirement that they also be certified for use in the soil classification at the site.

Comment: § 3285.312 Footings. Any type of interior supports and pads that are deemed appropriate by the manufacturer should also be acceptable for use on interior supports of permanent foundations, where any material longevity issues are satisfied.

HUD Response: A new paragraph, (a)(4), has been added to this section in the final rule to allow the use of other materials for footing pads, provided they are listed for such use and meet all other applicable requirements for footings in this subpart.

Comment: § 3285.312(c) Placement in Freezing Climates. DAPIA-approved installation manuals should indicate that all footings must extend below the frost line or be protected from the effects of frost heave.

Comment: Why are frost depths not established in the Model Installation Standards as they are in other model building codes, and instead determined by the LAHJ?

Comment: The requirements for monolithic slab systems and insulated foundations in paragraphs (2) and (3) should be revised to permit the design to be prepared by a registered professional engineer or registered architect using acceptable engineering practice to prevent the effects of frost heave or in accordance with SEI/ASCE 32–01, rather than requiring compliance to both of the above provisions. The commenters indicated that for monolithic slabs and insulated foundations there should be two ways to obtain approval, to avoid increasing the cost of installation.

Comment: The reference to the SEI/ASCE 32–01 design criteria should not be included because it is too stringent and would not allow perfectly acceptable installation alternatives to be used. Further, any installation system outlined by the manufacturer that meets or exceeds the requirements contained in the Model Installation Standards, is approved by a registered engineer, and provides for protection from the effects of frost heave should be allowed.

Comment: If only SEI/ACSE 32–01 is referenced, it may effectively eliminate any type of insulated skirting system from being used to permit pier footings to be above the frost line.

Comment: Four field test reports appeared to indicate that alternative strategies could be used to protect manufactured home foundation systems in freezing climates without requiring the foundations to be embedded below the frost line or conform to SEI/ASCE 32–01. The above-referenced tests have shown that insulated skirting materials can keep the ground under the home above freezing temperatures.

Comment: Requiring monolithic slabs to be approved by a registered professional engineer or a registered architect will have the consequence of adding thousands of dollars in costs to the purchase price of homes placed in manufactured home communities, not

to mention the additional costs resulting from either the relocation of, or damage and disruption to, the underground utility infrastructure such as water and sewer lines, electric supply lines, and cable and telephone lines.

Comment: Manufactured home land-lease communities do not have any flexibility in being able to shift a home even a few inches on a lot to avoid the intersection of the frost-free foundation system with the existing infrastructure. Further, frost-free foundation systems would require state-mandated lease agreements to be modified to reflect who the responsible party will be if a home's concrete slab needs to be removed for emergency repairs or for maintenance work to the park's infrastructure beneath the home. In addition, digging frost-free foundations could cause damage to existing utility services. Further, land-lease communities have allowed manufactured homes to be supported upon concrete block piers resting on either concrete "ribbons" or on concrete pads under the home. These systems have proven successful and provide an affordable alternative to supports embedded within the soil, if proper skirting and flexible utility connections were properly installed. The provisions of the proposed HUD standards requiring supports to be installed to or below frost depth should be limited to apply only to those homes permanently installed as real estate.

Comment: If it is determined that interior footings at crawl space finished grade, or at least at a reduced depth, are appropriate in frost climates on perimeter-insulated foundation designs, then this determination should also extend to permanent foundations. Placing all interior footings at frost depth below grade is unnecessary and will make manufactured homes less affordable, as the cost is estimated to be between $3,000 and $5,000.

HUD Response: The need to protect foundation and anchorage systems against the effects of frost heave is now specifically referred to in §§ 3285.312(b) and 3285.404 of the installation standard. HUD believes that, due to local variability in frost depth locations, local municipalities are the best sources for this information, and HUD will allow frost depth to be determined by the LAHJ in the final rule. Other cost-effective alternatives are permitted in the final rule, such as monolithic slabs and insulated foundation systems, provided they are designed in accordance with either accepted engineering practice to address the effects of frost heave or in accordance with the SEI/ASCE 32–01, Design and Construction of Frost-Protected Shallow Foundations. By permitting the use of these alternative methods and not requiring foundations to be placed below the frost line, HUD believes that problematic situations with utilities and in existing land-lease communities, as described by the commenters, are reduced.

Comment: Figure A to § 3285.312 Typical Blocking Diagram for Single Section Homes. Footnote 4 of this figure should be revised by changing the reference from "atrium doors" to "sliding glass doors," to maintain consistency with other requirements in the Model Installation Standards.

HUD Response: Footnote 4 has been revised in the final rule to refer to patio doors and sliding glass doors instead of atrium doors.

Comment: Figure C to § 3285.312 Footing Configuration Layout Designs. Figure C should be deleted from the final rule, since it is based on 16″ x 16″ footing pads; stacked footer layouts that could lead to poor foundation performance and that are inconsistent with the size and thickness of footing pads (i.e., 2′ x 2′ pre-cast concrete pads) typically used in installing manufactured homes. In addition, the use of footing layout configurations is overly conservative, not cost-effective, and should not be used as a minimum standard.

HUD Response: HUD agrees with the commenters, and Figure C has been deleted from the final rule.

Comment: § 3285.314 Permanent Foundations/HUD Question: Should the Model Installation Standards include a definition and expanded requirements for permanent foundations? If so, what specifics should be considered and included in the Model Installation Standards?

Comment: The model (minimum) standard should not require manufacturers to provide DAPIA-approved designs for permanent foundations. This would be an added extra cost to these producers for complying with a requirement that their buyers may not even wish to consider.

Comment: The model standard should make no mention of anything concerning how mortgage lenders or others can establish financing eligibility requirements for permanent foundations. This is for the financial institutions to decide, and this standard needs to stay focused on providing a model installation standard. Financing options are outside the scope of the rule, and such references should be deleted.

Comment: A permanent foundation under a HUD-Code home should be subject to the same requirements as any modular, panelized, or stick-built home under an LAHJ.

Comment: Without a clear definition for a permanent foundation, how will it be determined whether the proposed permanent foundation is adequate?

Comment: "Designs for permanent foundations (such as basements, crawl spaces, or load-bearing perimeter foundations) may be permitted to be obtained from the home manufacturer, or designed by a registered professional engineer or architect, and constructed in accordance with local building code requirements." This is the proper performance-based language for any section on permanent foundations.

Comment: HUD has materially deviated from the intent of the MHCC language by allowing states and localities to mandate that permanent foundations be used.

Comment: HUD should permit states or local governments to impose requirements for homes on permanent foundations in accordance with local governing codes, as long as the design exceeds the model standard, and HUD should not limit mortgage lenders from establishing financing eligibility requirements or underwriting standards that provide greater protection than the model standard.

Comment: Section 3285.314(a) should be deleted and replaced with, "The placement of a manufactured home on a permanent foundation must be in accordance with state [or LAHJ] requirements, installed in accordance with the listing by a nationally recognized testing agency based on a nationally recognized testing protocol, or installed in accordance with the manufacturer's approved permanent foundation installation instructions and in all cases, based on the home's design and load requirements of the Manufactured Home Construction and Safety Standards."

HUD Response: As suggested by a majority of the commenters, the requirements for permanent foundations have been deleted in the final rule. HUD's decision was based on a number of factors, including: (1) Under the Act, states and local governments are not restricted from establishing specific requirements for permanent foundations, provided they comply with the minimum requirements of the Model Installation Standards; (2) Mortgage lenders are not governed by the Model Standards; (3) HUD believes that these requirements may be better addressed as part of the national test protocol for alternative foundations referred to in § 3285.301(d) that HUD is developing together with the MHCC.

Comment: § 3285.315 Special Snow Load Conditions. The MHCC language regarding ramadas is preferable to that used in the proposed rule, because HUD unnecessarily limits the use of ramadas to areas where the snow load exceeds 40 psf. Commenter asks why couldn't a ramada be used on a home with a 20-psf roof where the snow load is 30 psf? Also, the MHCC language of "self supporting" is much clearer as to the intent than is the HUD language.

HUD Response: The final rule is revised to clarify that ramadas are to be self-supporting. HUD's installation program regulations will address requirements for placement of homes in accordance with the design requirements for roof loads and other geographic variations as indicated on the home's data plate.

Subpart E—Anchorage Against the Wind

Comment: § 3285.401(c). This section lacks sufficient detail as to the information that needs to be included in the manufacturer's installation instructions for anchor assembly type installations. Areas that need to be addressed include: strap attachment, strap angle, stabilizing plates, protection at the sharp corners, longitudinal anchoring methods, and alternative anchoring methods.

HUD Response: A new paragraph (d) has been added in the final rule to clarify that all of the information is required to be provided for anchor assembly type installations.

Comment: § 3285.401(a–c) Anchoring Instructions. The Maximum Diagonal Tie-down Strap Spacing Tables for determining anchorage requirements to resist wind loads in § 3285.401 are intended for use under specific circumstances. Since flood or seismic loads are not considered in the tables, a new footnote should be added at the end of each table to read as follows: "The maximum heights and strap spacing specified in the table assume no flood or seismic loads acting on the foundation or home. These tables shall not be used in flood hazard areas or seismic hazard areas. In these areas, the foundation and the anchorage design shall be specified by a registered engineer or professional architect."

HUD Response: The tables have been relocated to § 3285.402 in the final rule. A footnote has been added to each table indicating that flood or seismic loads have not been considered and that the tables are not intended for use in flood or seismic hazard areas. In those areas, the anchorage system must be designed by a registered professional engineer or architect.

Comment: § 3285.401(c). The current wording sounds as if a home MUST be installed to the design loads. The language should be changed to read as follows: "(c) All anchoring and foundation systems must be capable of meeting the loads required by part 3280, Subpart D of the Manufactured Home Construction and Safety Standards (MHCSS), for the area in which the home is located. The home's design must be based on the loads shown on the data plate, or higher." Another commenter indicated that this provision would be unnecessarily burdensome and costly for foundation and anchoring requirements, if a home is to be sited in a roof load zone or wind zone that had less restrictive design load requirements than the home had been designed to resist.

HUD Response: An exception has been added to this section in the final rule to indicate that when manufactured homes are installed in less restrictive roof load zone and wind zone areas, they may have foundation or anchorage systems that are capable of meeting the lower design load provisions of the part 3280 standards. However, this is conditioned upon the availability of either a design for the lower requirements in the manufacturer's installation instructions or having a foundation and anchorage system designed for the lower requirements by a professional engineer or registered architect.

Comment: § 3285.401(d) Anchoring Instructions. A new paragraph should be added to 3285.401: "Compliance with the wind requirements of NFPA 225 shall be deemed to comply with 3285.401(a) through 3285.401(c).

HUD Response: This comment was not accepted, as the requirements in the final rule for anchoring are different in certain respects than those contained in NFPA 225.

Comment: § 3285.402(a) Ground Anchor Installations. The definition for "ground anchor" should be changed to "ground anchor assembly," as all portions of the anchor, anchor head, bolts and nuts, stabilizer plates, etc., should be protected from corrosion.

HUD Response: A new definition for anchor assembly is included in the revisions to parts 3280 and 3285. However, the final rule also contains a separate definition for ground anchors.

Comment: § 3285.402(a). The requirements for a nationally recognized ground anchor test protocol should not be finalized until the MHCC recommendations for the test protocol are finalized and presented to HUD for its consideration.

Comment: Proposed changes to ground anchor testing methods are not necessary because the testing protocols currently in place have worked well for many years. Failures are not a result of test requirements; they are a result of not following installation instructions. Changing the testing requirements would result in higher costs to homeowners.

Comment: The rule does not address the capacity of ground anchors in wet or saturated soil. The lack of specific test standards and protocols in the rule will result in the actual performance of different anchors under the same conditions to vary greatly. This will impact the ground anchor spacing provided in the rule.

Comment: Minimum spacing of anchors is not a requirement in the current anchor test protocol being developed by the MHCC Installation Subcommittee and should be considered.

HUD Response: HUD disagrees with the comment that a national testing protocol is not needed, because anchor performance is dependent on a number of factors, including soil strength, angle of pull, and size of the stabilizer plate, which are not consistently being evaluated due to the unavailability of a national testing requirement. Recommendations for a nationally recognized testing protocol for anchors referred to in § 3285.402(a) of the final rule are currently being developed by the MHCC, and when completed, are expected to address testing and certification of anchors in saturated soils.

As part of HUD's current research program to evaluate the MHCC draft testing proposal and make recommendations for a national test method for anchoring systems, anchor resistance, and behavior when anchors are located in close proximity to each other will also be considered.

During the interim, anchors are required to be capable of resisting an ultimate load of at least 4,725 pounds and a working load of at least 3,150 pounds in any soil type or classification, including saturated soils, unless reduced ground anchor or strap capacities are used, as permitted in the final rule.

Comment: 3285.402(b)(1) Ground Anchors. Ground anchors must be required to be installed to their full depth because when ground anchors are tested they are installed to their full depth.

HUD Response: Section 3285.402(b) of the final rule has been revised to require that ground anchors be installed to their full depth. Ground anchors that

are not installed to their full depth have significantly reduced resistance to lateral, longitudinal, and uplift forces.

Comment: § 3285.402 Ground Anchor Installations. This section of the proposed rule would require galvanizing of ground anchors, anchor equipment, and stabilizing plates to be zinc-coated in all instances. This is inconsistent with § 3280.306(g) of the Manufactured Home Construction and Safety Standards that permit anchoring equipment to have a resistance to weather deterioration at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft^2. It also would preclude other acceptable forms of acceptable corrosion protection from being used, such as stainless steel, epoxy coatings, and even mill galvanizing, which are acceptable methods of corrosion protection in the site-building industry. Has HUD considered the economic impact of requiring all anchoring equipment to be zinc coated?

Comment: Not all ground anchor assemblies will require the use of steel stabilizer plates. If a ground anchor assembly is tested to be listed or certified according to the Ground Anchor Test Protocol currently under consideration by the MHCC Subcommittee on Installation, that design should be able to be listed as a certified anchor assembly under that section.

HUD Response: HUD agrees with the commenters and § 3285.402(c)(2) of the final rule has been revised to indicate that if metal stabilizer plates are used, they must be provided with protection against weather deterioration and corrosion at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft^2 of surface coated. This paragraph of the final rule also indicates that ABS stabilizer plates may be used when listed and certified for such use.

Comment: § 3285.402 Ground Anchor Installations. Longitudinal Anchoring. Longitudinal anchoring should not be required in wind zone 1 locations.

Comment: A figure illustrating the installation of longitudinal anchors and tie-down straps should be provided showing the correct and incorrect methods of attachment of the tie-down straps to the chassis beams, as indicated in note 2. Also, further illustrations should be included to show the correct and/or incorrect methods of ground anchor installations, such as stabilizer plates, strap attachment (swivel strap, frame tie w/hook, frame tie w/buckle), proper strap tensioning, and concrete slab anchors.

Comment: Section 3285.402(b)(2) is overly prescriptive and restrictive and should be modified to permit pan-bracing or other types of bracing systems to be used for longitudinal anchoring. The standard should be modified to permit pan-bracing systems to be used, unless there is data indicating such systems are insufficient for this purpose.

HUD Response: Longitudinal anchoring is required to be provided to resist the design wind forces in all wind zones in the final rule based on the recommendations of the MHCC, NFPA 225, and engineering analysis. As suggested by the commenters, a new Figure C to § 3285.402 has been added in the final rule to provide an example method for providing the longitudinal anchoring required by the final rule. Section 3285.402(c)(3) has also been revised in the final rule to permit the use of alternative systems, such as pan-bracing type systems, provided they are capable of resisting the wind forces in the longitudinal direction.

Comment: § 3285.402 Figure B Anchor Strap and Pier Relationship. Note 2 (the diagonal ties footnote) should be removed, as there are other methods of preventing rotation of the I beam, including cross member placement. The sentence should be reworded to state: "When strap is attached to bottom of I beam, the I beam must be designed to prevent rotation."

HUD Response: Section 3285.401(d)(3) and Note 2 to Figure B on Anchor Strap and Pier Relationship have been revised in the final rule to indicate that when diagonal ties are not attached to the top flange of the main chassis beam, that the frame must be designed to prevent rotation of the beam.

Comment: Tables 1–3 to § 3285.402. The information listed in the tables does not include tie-down strap spacing requirements for 36-foot-wide units. The tables should be expanded to also include 75.5″ I-Beam spacing, because homes are currently being constructed to that specification. Also, the tables should be expanded to include other sidewall heights, such as 84″, 96″, and 108″, which are industry standards.

Comment: Note 2 of the tables specifies maximum 4″ inset of the anchor head, but an inset of 6″ is more typical to allow for skirting and perimeter wall or piers.

Comment: In Note 6 for Table 1 and Note 7 for Tables 2 and 3, the second sentence should be revised to read as follows: "Table based upon the minimum height between the ground and the bottom of the floor joist being 18 inches."

Comment: The provision in Note 9 in Table 1 and Note 10 in Tables 2 and 3 should be revised to require that ground anchors be installed in accordance with the ground anchor manufacturer's instructions and not the home manufacturer's instructions.

Comment: The "second beam method" provided in Tables 2 and 3 is not a viable option because of potential damage to HVAC ducts, plumbing, etc., in the floor. If the "second beam method" is retained, a cautionary note should be added to the tables to warn of potential damage.

Comment: The anchor test protocol currently being developed by the MHCC Installation Subcommittee is recommending a 30-degree minimum angle for testing anchors in the diagonal direction. As such, 18-foot-wide units at 25″ or less in height from the ground to the attachment point on the frame represent the only situation where the 30-degree minimum angle from horizontal cannot be maintained. Rather than unnecessarily limiting anchor performance, HUD should require the minimum height for 18-foot sections to be 33 inches or higher.

Comment: A footnote should be added to Tables 2 and 3 to indicate that the tables are based on a maximum force of 1,640 lbs. being resisted by vertical tie straps. This is the maximum tension in the vertical strap as a result of tie-down calculations used to develop the tables. This note is important to properly size sidewall strap attachment components and brackets.

HUD Response: The tables for diagonal strap spacing are based on recommendations from the MHCC and represent the most commonly used main chassis beam spacing of 82.5 inches and 99.5 inches and sidewall height of 90 inches. Other main beam spacing configurations or sidewall heights must be designed by a professional engineer or registered architect. The tables for diagonal strap spacing were developed based on a 4″ maximum inset. Other insets for ground anchors are permitted, provided they are included in the installation instructions or designed by a professional engineer or registered architect.

Note 6 in Table 1 and Note 7 in Tables 2 and 3 on minimum height between the ground and floor joist has been revised in the final rule, in accordance with the above comments. Spacing requirements for 18-foot section widths were removed from the Tables 1 through 3 for consistency with other tables in other chapters of these installation standards.

Tables 1 through 3 have also been revised in the final rule by providing

additional conditions for the minimum and maximum angles for their applicability and use in determining the maximum spacing of diagonal tie-down straps in Wind Zones I, II, and III. These limitations were recommended by the MHCC Installation Subcommittee based on the unfavorable results of anchor tests in weak soils, where the angle of pull on the anchor was 30 degrees or less. As a result, a number of the far beam spacing provisions are no longer applicable for use with the tables, although such provisions may be used in accordance with a site-specific design approved by an architect or engineer.

In the final rule, HUD did not include information on vertical tie strap capacity for connections, as this needs to be considered in the manufacturer's designs and installation instructions and is, therefore, not specified in the tables.

Comment: § 3285.404 Severe Climatic Conditions. Under § 3285.404, it should be acceptable for ground anchors to be installed above the frost line, when the footings for the foundation system are frost-protected against the effects of frost heave. There should be a reference to § 3285.312(c), in which the approved alternate anchoring system may be included as part of a listed or labeled foundation support system (floating slab or insulated foundation).

HUD Response: Section 3285.404 of the final rule has been revised to permit ground anchors to be installed above the frost line, provided the foundation system is frost protected to prevent the effects of frost heave, in accordance with acceptable engineering practice and §§ 3280.306 and 3285.312.

Comment: § 3285.405 Severe Wind Zones. As more stringent anchorage design requirements may be specified elsewhere in these standards, by the LAHJ or the state, wind-resistant anchorage provisions contained in NFPA 225 should be deemed acceptable, and should be referenced for use by installers, designers, and LAHJs, if they so choose. The section should be revised to read as follows: "When any part of a home is installed within 1,500 feet of a coastline in Wind Zones II or III, the manufactured home must be designed for the greater of the increase requirements as specified (1) on the home's data plate (refer to § 3280.5(f) of this chapter), (2) elsewhere in these standards, or (3) by the LAHJ or state, and in accordance with acceptable engineering practice. Where site or other conditions prohibit the use of the manufacturer's instructions, a registered professional engineer or registered architect in accordance with acceptable engineering practice must design anchorage for the special wind conditions. Compliance with the severe wind requirements of NFPA 225 shall be deemed to comply with 3285.405."

HUD Response: The final rule does not include a provision that recognizes the wind and anchoring provisions of NFPA 225 as deemed to comply with these standards, as those requirements are not consistent with these standards. For purposes of installation, a state or LAHJ can establish more stringent wind design provisions for anchoring than are required by these minimum standards.

Comment: § 3285.406 Flood Hazard Areas. The section should be reworded to read as follows: "In flood hazard areas, the piers, anchoring, and support systems must be capable of resisting all combined loads associated with design flood and wind events." This is particularly important in geographic areas susceptible to hurricanes where the homes will be subjected to high winds and saturated soil simultaneously. The scouring effects of both wind and water forces also need to be addressed regarding the anchoring and support system components.

HUD Response: A reference to anchoring requirements in flood hazard areas has been included in § 3285.302 of the final rule.

Subpart F—Optional Features

Comment: § 3235.502 Expanding Rooms. The first sentence of this section should be revised to read as follows: "The support and anchoring systems for expanding rooms must be installed in accordance with designs provided by the home manufacturer or prepared by a registered professional engineer or registered architect in accordance with acceptable engineering practice." As proposed, the paragraph suggests that only a registered professional engineer or architect can design the installation.

HUD Response: The final rule has been revised to also allow designs for support and anchoring of expanding rooms to be provided by the home manufacturer as an alternative to designs having to be prepared by a professional engineer or registered architect.

Comment: § 3285.503 Optional Appliances. These items [all optional features] are clearly under the scope of state and local codes. It would seem that HUD would be preempting such authority by state and local government to address such items.

Comment: Section 3285.503(a) should also include a reference to the LAHJ and local or state code requirements, in addition to requirements in the manufacturer's instructions. The appliance manufacturer's instructions may not address all requirements that would be included in local or state codes enforced by the LAHJ.

Comment: The word "must" could be confusing when referring to optional appliances. These appliances are optional, but the language could be read to require them to be mandatory. Accordingly, the section should be clarified to read as follows: "Comfort cooling systems installed by someone other than the home manufacturer, must be done according to the appliance manufacturer installation instructions."

Comment: Minimum standards found in the International Residential Code (IRC) and International Fuel Gas Code should be referenced for various appliances and ventilation requirements in this chapter.

Comment: While ventilation requirements should be consistent with model building codes, referencing the model codes in these standards would create yet another document that will need to be updated and revised.

HUD Response: These installation standards are minimum requirements that a state or local jurisdiction must meet or exceed for any provision of these standards, including optional features covered by this subpart. Accordingly, HUD is not preempting state or local authority in these areas as suggested by the commenters, as states and municipalities may adopt additional requirements for the installation of optional appliances.

References to the International Residential Code (IRC) or International Fuel Gas Code (IFGC) were not presented to the MHCC or suggested to the Department during the development and issuance of the proposed rule. Accordingly, they cannot be considered for introduction at this time into the final rule. However, the commenter may want to re-introduce them again when subsequent revisions to the installation standards are being considered by HUD.

The final rule also indicates that when not provided and installed by the manufacturer, any comfort cooling system that is installed must be installed according to the appliance manufacturer's instructions.

Comment: § 3285.503(a)(1)(i) Energy Efficiency. The references within this section should be clarified as to what constitutes proper operation and energy efficiency and closely match, with regard to heat gain for sizing, site-installed air conditioning systems. Also, the requirements for determining heat gain do not appear to include a calculation for latent heat gain.

Comment: ASHRAE and other energy standards require the calculation of the

design cooling load, provide the standards by which such load is calculated, and then require the equipment chosen to be the next size available that meets that load to be chosen.

HUD Response: Section 3285.503(a)(1)(i) of the final rule has been revised to eliminate the references to: (1) "For proper operation and energy efficiency" and (2) sizing site-installed air conditioning systems to "closely match" the home's heat gain requirement. The final rule now provides that the air conditioning system must meet the heat gain requirement. In addition, the reference to the term "sensible" has been deleted in the final rule so that air conditioning systems are now required to be sized to meet the home's overall heat gain.

Comment: § 3285.503(a)(1)(iii) A-coil Units. Simply stating that the air conditioning unit is to be compatible for use with the furnace may not be enough to ensure safety and performance. What about the furnace's manufacturer's instructions and warranties?

HUD Response: The final rule has been revised to require that A-coil air conditioning units must be compatible and listed for use with the furnace and also comply with the appliance manufacturer's instructions, as recommended by the commenters.

Comment: § 3285.503(a)(2) Heat Pumps. The section as proposed does not provide any sizing criteria for heat pumps and should refer to minimum standards that would apply to such equipment.

HUD Response: Heat pumps must be sized to meet the requirements of the Manufactured Home Construction and Safety Standards, 24 CFR part 3280.

Comment: § 3285.503(c) Appliance Venting. This section should be revised to be consistent with the wording in 24 CFR 3280.707(b), as follows: "Heat producing appliances, except ranges and ovens, must exhaust to the exterior of the home."

HUD Response: Section 3285.503(c)(1) and (2) of the final rule have been revised to be consistent with the requirements of the Manufactured Home Construction and Safety Standards, as recommended by the commenter.

Comment: § 3285.503(d) Flood Hazard Areas/HUD Question. Where should the outside appliance air inlets and exhausts be located with respect to the base flood elevation in flood hazard areas?

HUD Response: The requirements have been relocated to § 3285.102(d)(2)(ii) in the final rule and revised to indicate that exterior appliance air inlets and exhausts in flood hazard areas are to be located at or above the lowest floor elevation of the home.

Comment: § 3285.503(d) Figure Dryer Exhaust System. The illustration shows a reverse slope that does not agree with Note 2.

HUD Response: The illustration has been corrected to eliminate the reverse slope.

Comment: § 3285.504 Skirting. To ensure performance, uniformity, and repeatability, some standard should be referenced to determine that the materials used for skirting are weather-resistant.

Comment: All wood skirting within 6″ of the ground should be pressure-treated in accordance with the AWPA standard U1 for Use Category 4A ground contact applications or be naturally resistant to decay and termite infestations. This would allow a lower requirement for skirting materials than for footing pads, since it is a non-structural application.

HUD Response: Performance criteria for protection against weather deterioration for skirting materials have been included in the final rule and pressure-treatment requirements for wood skirting have been revised, as suggested by the commenter.

Comment: § 3285.505(a) Crawlspace Ventilation. Consider model building code requirements for ventilation requirements, as the proposed requirement for ventilation of one square foot for every 1,500 square feet is insufficient. There should also be not less than four vents in order to control humidity and for management of mold/mildew and temperature handling.

Comment: § 3285.505(b). The section should be revised to read as follows: "Ventilation openings must be placed as high as practicable above the ground."

Comment: § 3285.505(d) Crawlspace Ventilation. The word "metal" should be eliminated from § 3285.505(d) to allow other materials to be used for ventilation openings that may perform equal to or better than metal.

Comment: Ventilation openings should be covered with a perforated rodent resistant covering resistant to decay.

Comment: Requirements for operable louvers should be addressed in cold climates.

Comment: § 3285.505(e). A minimum access opening of not less than 24″ by 30″ or five square feet should be required. An opening less than 18″ in any dimension is typically not large enough for service personnel to access underneath the home.

HUD Response: The ventilation requirements are generally consistent with other model codes and have not been changed in the final rule, with the exception of the minimum access opening dimensions and requirements for operable or adjustable type openings to be provided in areas subject to freezing. The access opening has been increased in § 3285.505(e) of the final rule from 18 inches in any direction to 18″ by 24″ in height. In addition, the term "metal" has been deleted in paragraph (d) and replaced with "corrosion and weather resistant" covering. The final rule also requires openings for ventilation to be placed as high as practicable above the ground.

Subpart G—Ductwork and Plumbing and Fuel Supply Systems

Comment: § 3285.601 Field Assembly. HUD should clarify if the section refers to manufacturer-supplied shipped loose duct systems, because, as presently written, any loose duct would be covered by the rule.

HUD Response: The final rule now refers to "manufacturer-supplied shipped loose ducts," to clarify the intent of this section.

Comment: § 3285.603(c) Mandatory Shutoff Valve. This section should be modified to require the mandatory shutoff valve to be accessible and clearly identifiable.

HUD Response: Section 3285.603(c) of the final rule has been revised to require the master shutoff valve to be both accessible and identifiable, as suggested by the commenter.

Comment: § 3285.603(d) Freezing Protection. The term "heating cable" should be replaced with the more commonly used term, heat-tape.

Comment: What is "normal occupancy," as referred to in § 3285.603(d), and what would then constitute "abnormal occupancy"?

HUD Response: Sections 3285.603(d)(1) and (2) have been revised to delete reference to the term "under normal occupancy," as suggested by the commenters. However, heating cable is the correct term to be used to describe this material and, accordingly, no change is being made to this section in the final rule. A conforming change to the term "heating cable" will also be made in future revisions now contemplated for the MHCSS.

Comment: § 3285.605 Fuel Supply System. The first sentence of § 3285.605(a) should be revised as follows in order to be consistent with the requirements specified in 24 CFR 3280.705(a): "The gas piping system in the home is designed for a pressure that is at least 7 inches of water column * * * and not more than 14 inches of water column * * *".

HUD Response: The requirements for testing of gas piping systems in the final rule have been revised to be consistent with the testing requirements in the Manufactured Home Construction and Safety Standards.

Comment: § 3285.606 Ductwork Connections. Mastics approved to UL 181 should be used in all cases to seal connections to prevent air leakage. However, mastics should not be used as the only means of connection. Tapes, regardless of whether they are approved or not, should not be allowed, except to aid in the installation of the ductwork for temporary securement.

Comment: UL standards 181A and 181B should be referenced for the sealing of duct systems.

Comment: The term metal plumber's tape should be removed from § 3285.606(a).

HUD Response: The final rule has been revised to clarify the requirements for sealing of ductwork connections so that the appropriate type of tapes and mastics are specified, depending on the type of air duct being used. In addition, the final rule also clarifies that sheet metal ducts must be mechanically fastened, as suggested by the commenters. The reference to "metal plumber's tape" has also been deleted.

Comment: § 3285.606(e). The section should be revised to read as follows: "The duct must be suspended or supported above the ground at maximum 4 feet-0 inches on center (unless otherwise noted) and arranged under the floor to prevent compression or kinking in any location, as shown in Figures A and B of this section."

Comment: When straps are used to support a flexible duct, the straps must be at least ½" wider than the metal spiral spacing of the duct, and installed such that the straps cannot slip between any two spirals.

HUD Response: Section 3285.606(e) has been revised in the final rule, in accordance with the recommendations of the commenters.

Comment: Figure A to § 3285.606 Crossover Duct Installation With Two Connecting Ducts, Figure B to § 3285.606 Crossover Duct Installation With One Connecting Duct. Note 2 should be revised to read as follows: "Note 2. Crossover duct should be listed for exterior use."

Comment: The concrete block support shown in both figures should be removed as an acceptable support for the crossover duct.

HUD Response: HUD agrees with the commenters, and Figures A and B have been revised by deleting the concrete block support from each figure and by adding a note to each figure to indicate that the crossover duct must be listed for exterior use.

Subpart H—Electrical Systems and Equipment

Comment: § 3285.702(d) Miscellaneous Lights and Fixtures. Ceiling fans must be attached to a properly installed junction box that is listed for ceiling fan application.

HUD Response: Section 3285.702(e)(1) of the final rule has been revised to refer to Article 314.27(b) of the National Electrical Code, NFPA No. 70–2005, for connection requirements of the ceiling fan to the electrical junction box and to require the junction box to be listed and marked as suitable for ceiling fan application.

Comment: § 3285.702(e) Testing. Paragraph (e)(1) should be deleted in its entirety and (e)(2) should be changed to (e)(1) and revised to read as follows: "After completion of all site connections of cross-overs, exterior lights, ceiling fans, etc., each manufactured home must be subjected to the following tests, consistent with § 3280.810 of the MHCSS * * *".

Comment: The section should be revised to refer to the electrical testing requirements in § 3285.810(b) of the MHCSS in order to clarify that dielectric tests are not required to be performed after setup. In addition, all of § 3285.702(e)(2) should be deleted as it both duplicates and contradicts what is already required by § 3285.810(b).

HUD Response: The final rule has been revised in a manner that is consistent with the recommendations of the commenters.

Subpart I—Exterior and Interior Close Up

Comment: Figure A to § 3285.801 Installation of Field-Applied Horizontal Lap Siding. The notes and figure need to be less specific and revised to read as follows: Note 1 should be revised by changing the reference from "double section" to "multi-section." Note 2 should be revised to clarify that all doors and windows need not be covered with plastic sheeting, and the word "fasteners" deleted, because installers, rather than manufacturers, generally provide fasteners so that they are compatible with their installation equipment. The note in Figure A should be revised to read as follows: "Windows installed with j-rail or brick mold around it," because many windows are equipped with brick mold and it serves the same purpose as the j-rail.

HUD Response: As suggested by the commenters, editorial revisions have been made to the section and Note 2 has been clarified to indicate that only materials that are not designed to be exposed to the weather are to be covered with plastic sheeting.

Comment: § 3285.801(d) Joints and Seams. Any holes made in the roof must be sealed, utilizing approved methods and materials.

Comment: The type of acceptable sealant should be specified in the Model Installation Standards for sealing the holes.

HUD Response: Section 3285.801(d) has been revised in the final rule by clarifying that the roofing must be made weatherproof and any holes sealed with a sealant that is suitable for use with the type of roofing in which any hole is made.

Comment: § 3285.801(e) Mate-line Gasket. Gaskets should also be capable of resisting the entry of water vapor in addition to air, water, insects, etc.

Comment: Permit installers or homeowners to provide the mate-line gasket, provided the materials comply with the manufacturer's installation instructions.

HUD Response: The final rule has been revised by requiring the mate-line gasket to also be capable of providing resistance against water vapor entry. However, HUD does not agree with suggestions made by commenters that the mate-line gasket be allowed to be provided by parties other than the home manufacturer. This is because HUD deems the gasket material to be an integral part of the construction of the home to provide the resistance to the weather required by the MHCSS.

Comment: § 3285.801(f) Hinged Roofs and Eaves/HUD Question. Should the requirements for hinged roofs and eaves be considered installation and subject to the Model Installation Standards and not construction, as proposed by HUD?

Comment: A hinged roof should be treated as construction of the home's roof assembly and subject to the requirements of the HUD Code.

Comment: The Model Installation Standards should be extended to cover any hinged roof, regardless of wind zone, roof pitch, or flue penetration. This is a normal construction process that is occurring more routinely with HUD Code installations and would save considerable money with regard to Production Inspection Primary Inspection Agency (IPIA) inspection under the on-site completion rule and time under the alternative construction (AC) letter process.

HUD Response: It continues to be HUD's position that the on-site completion of hinged roofs with eaves is generally part of the construction process, and that hinged roofs with

eaves must comply with all requirements of the Manufactured Home Construction and Safety Standards (24 CFR part 3280) and the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282), even though this work is often completed during the set-up of the home. Accordingly, certain hinged roofs and other construction completed on-site will continue to be subject to the provisions for Alternative Construction in § 3282.14 of the Manufactured Home Procedural and Enforcement Regulations, and may be also subject to the provisions of the future rulemaking for on-site construction. However, manufactured homes with hinged roofs and eaves are not subject to these special requirements if the homes: (1) Are designed to be located in Wind Zone I; (2) have a pitch of the hinged roof that is less than 7/12; (3) have fuel burning appliance flue penetrations that are not above the hinge; and (4) have been completed and inspected as part of the installation process under future rulemaking being developed for the installation program regulations. Nevertheless, even for the above-described conditions, manufacturers are still responsible for providing instructions on how to complete each hinged roof and/or eave construction, in accordance with the requirements of the Manufactured Home Construction and Safety Standards.

Comment: § 3285.802 Structural Interconnection of Multi-Section Homes. As proposed, the section is unclear and needs to be clarified as to whether any gap is permitted along the mate-line between sections of multi-section homes.

Comment: The section needs to be clarified as to whether any gap between structural elements must be shimmed or only those gaps that exceed 1½ inches.

Comment: Fastener lengths would need to be increased to provide adequate protection and staples or nails need to be at least 1½ inches in length at a minimum.

Comment: A 1½″ gap is too much because these homes are built in a factory environment where conditions are controlled so that there should be tighter tolerance. The requirement should be reduced to no more than ¾″ gap between structural elements.

Comment: When home sections are in contact and the mating gasket is sealed, then all gaps should be filled.

HUD Response: Section 3285.802(c) of the final rule has been revised to clarify that upon completion of the close-up, no gaps are permitted between structural elements being interconnected at the marriage line of multi-section homes. However, prior to completion of the close-up, gaps of up to one inch are allowed between structural elements if they are closed upon completion of the set-up; the home sections are in contact with each other, and the mating gasket is providing a proper seal. Also, all gaps are to be shimmed with dimensional lumber and fastener lengths are to be increased to provide adequate penetration into the receiving member of the elements being joined.

Comment: § 3285.803(b) Interior Close-up. This section should be revised or deleted. Polyvinyl acetate (PVA) adhesives should not be required for on-site fastening of shipped loose panels. Standard drywall fastening does not require adhesive and thus there is no reason for this excessive prescriptive requirement. When the home has been designed utilizing a structural adhesive for wall panels, the requirement should be specified in the installation instructions of the particular home manufacturer.

HUD Response: Editorial revisions have been made to this paragraph in the final rule, and the final rule has been revised to permit alternative fastening methods to PVA adhesives for installing shipped-loose panels, if specified in the manufacturer's installation instructions.

Comment: Figure A to § 3285.803 Installation of Field-Applied Panel. What is the intent of restricting the panel width to no less than 16″ or no larger than 32″? Further, if typical panels are 48″ inches in width, how can a "full size" panel be over 16″ but less than 32″ in width?

Comment: The panel size depicted in the figure and note should be changed to read as follows: "One full-sized panel 48 inches or less in width."

HUD Response: As suggested by the commenters, the note in the figure has been revised in the final rule to indicate: "One full-sized panel 48 inches or less in width."

Comment: § 3285.804 Bottom Board Repair. Prior to closure of the underbelly cavity of the home, any areas being repaired must be inspected and any missing insulation replaced before completing the repair of the bottom board material.

Comment: Any splits or tears must be resealed in accordance with the manufacturer's installation instructions.

HUD Response: Section 3285.804(a) of the final rule has been revised to require any missing insulation to be replaced prior to closure and repair of any damage to the bottom board. Section 3285.804(b) has been revised to require any split or tear in the bottom board to be resealed, in accordance with methods described in the installation instructions.

Subpart J—Recommendations for Manufacturer Installation Instructions

Comment: § 3285.901 Recommendations for Manufacturer Installation Instructions. The reference to the "following cautions" in paragraph (c) should also include the cautions or recommendations in paragraphs (a) and (b), as they are as important as the remaining sections of Subpart J.

Comment: The provisions of Subpart J do not relate to the content of manufacturer instructions. It is recommended that this subpart be reconsidered as follows: § 3285.901(a) and (b), § 3285.902, and § 3285.903 could be relocated to subpart B; § 3285.904 could be moved to § 3285.203; and § 3285.905 could be consolidated at § 3285.602.

HUD Response: This subpart of the final rule has been re-titled "Optional Information for Manufacturer Installation Instructions" and reorganized to include recommendations that may be provided as part of the installation instructions. The cautions have been removed in the final rule and replaced with recommendations for inclusion by manufacturers in their installation instructions.

Comment: § 3285.903 Permits, Alterations, and On-site Structures. Planning and permitting processes, as well as utility connection requirements, are outside HUD's authority, but in the proposed rule, HUD does provide standards for some of these items.

HUD Response: The final rule makes recommendations, rather than mandatory directives, for inclusion of certain information in the installation instructions related to moving homes to locations; permits, alterations, and on-site structures; utility system connections; and telephone and cable TV wiring. It contains no requirements that these items be actually included in the instructions. The requirements for "positioning the home" have been deleted in the final rule.

Comment: § 3285.902(d). Fire separation distances should consider the requirements of the LAHJ, as well as distances required in NFPA 501A.

HUD Response: The provisions for fire separation in the final rule have been relocated to subpart B, § 3285.101, and require installation instructions to indicate that fire separation distances must be in accordance with Chapter 6 of NFPA 501A, 2003, or the requirements of the LAHJ.

Comment: § 3285.902(a) Moving Manufactured Home to Location. One

commenter wrote that the following sentence should be added to the introductory paragraph: "Inform and contact the LAHJ before moving manufactured home to the site or location."

HUD Response: The final rule has been revised to indicate that the LAHJ should be informed before moving the manufactured home to the site.

Comment: § 3285.903(c)(3). The section should be revised to read as follows: "Unless approved by the home manufacturer's installation instructions, all buildings, structures, and accessory structures must be designed to support all their own live and dead loads." Recent tornado and hurricane activities have caused many manufacturers to realize the importance of proper connections of site-installed structures to their homes and offer designs that incorporate the additional roof and wind loads imposed by those site additions.

HUD Response: Section 3285.903(c) of the final rule has been revised to require any accessory building or structure to be capable of supporting its own live and dead loads, unless the structure is designed to be attached to the manufactured home by a professional engineer or registered architect or is otherwise specifically included in the manufacturer's installation instructions.

Comment: § 3285.905 Utility System Connections. If LAHJ requirements govern utilities and LAHJ standards vary, how can there be any meaningful installation instruction with regard to utilities? The instruction, at best, should refer installers and residents to consult with any serving utilities; and, as such, no regulation is necessary.

HUD Response: The final rule has been revised by recommending the installation instructions suggest different procedures for the installer to follow prior to making any utility system connection, depending on the availability of utility services, an LAHJ, or both, as well as procedures to follow in rural areas where utility services are not available and there is no LAHJ.

Comment: § 3285.905 Drainage Systems. The proposed language for making drainage-to-sewer system connections is too restrictive, as an installer may opt to "hard-pipe" the connection without the use of an elastomeric coupling device.

HUD Response: The final rule has been revised by recommending the use of other methods acceptable to the LAHJ as an alternative to elastomeric couplings for connecting the main drain line to the site sewer hookup.

Comment: § 3285.906 Heating Oil Systems. Since fuel oil supply tanks and systems installed at the site are not within the scope of HUD's authority, what makes fuel oil different from propane, site installed air conditioning systems, etc? This will make it harder to determine who is responsible for installation and liability, should something go wrong.

HUD Response: While HUD agrees that these provisions for site-installed oil fuel tanks and systems are outside of the scope of HUD's authority, for fire safety and other considerations the final rule does recommend that installation instructions include information related to installation and testing of oil supply tank and piping, in accordance with NFPA 31, 2001, Standard for the Installation of Oil Burning Equipment, and oil furnace manufacturer instructions for pipe sizing and installation procedures.

Comment: § 3285.907 Telephone and Cable TV. A reference to the applicable sections of the National Electrical Code, NFPA 70—2005 Edition, should be incorporated in the manufacturer's installation instructions for telephone and TV cable wiring and connections.

HUD Response: A reference to the National Electrical Code has been added in the final rule to the recommendations for installing telephone and cable TV wiring.

Miscellaneous Comments

Comment: Enforcement and Program Operation Matters. HUD received a large number of comments and questions related to the operation and enforcement of its installation program.

HUD Response: Comments and questions related to program operation and enforcement are not being addressed in this rulemaking. Instead, they will be duly considered by HUD, as appropriate, in response to the proposed rule for the Manufactured Home Installation Program, 24 CFR part 3286, that was published in the **Federal Register** on June 14, 2006.

Comment: § 3285.5 Definitions—"Installers." One of the most glaring omissions from the proposed installation standards was a definition or identification of manufactured home installers since, as drafted, so many construction responsibilities are redistributed to installers. While the proposed rule speaks as if there is one installer per project, in reality there are many installers involved. By failing to define installers, responsibilities are being further fractured and protections are weakened. The commenters advocate that to ensure quality, durability, and safety, a single entity needs to take responsibility, which they believe should be the manufacturer.

HUD Response: A definition for "installer" is in the proposed rule for the installation program regulations in part 3286.

Comment: Exclusivity of Model Installation Standards. It is important for the standards or their state-adopted counterparts to be the only federal installation standard recognized by HUD. Currently, HUD's FHA Title II program references the Permanent Installation Guide for Manufactured Housing.

HUD Response: HUD is considering whether to amend references in its current Title II program to specifically refer to these Model Installation Standards.

Comment: Impact on Federal Agencies. One commenter wrote that HUD has not considered the impact of the proposed rule on other federal agencies that are engaged in purchasing and installing manufactured homes for federal purposes. Since the proposed rule does not address the regulations establishing an installation program, it is impossible to determine if this rule, as part of a larger program, imposes any mandates on state or local government.

HUD Response: These issues will be considered as part of HUD's federalism analysis on this final rule.

Comment: Bay Windows. The Department deleted the MHCC draft recommendation for inclusion of bay window installation under the proposed Model Installation Standards. Commenters wrote that under § 3285.801(f), a manufacturer would need to furnish installation instructions for a hinged roof so that the installer would know the necessary elements of field installation. Bay windows are similar, as they would be a "ship-loose" item. In the opinion of these commenters, as long as the home is designed properly for the product attachment, the manufacturer provides DAPIA-approved installation instructions, and the installer can follow those instructions, bay windows should be covered under the Model Installation Standards and not the Manufactured Home Construction and Safety Standards.

HUD Response: HUD does not agree with these commenters, and will continue to treat the site completion of bay windows as construction that is subject to the Manufactured Home Construction and Safety Standards. A detailed discussion of the comments and HUD's position on hinged roofs and eaves can be found above under the analysis of public comments for § 3285.801.

Comment: Every other national design standard and code for residential construction, including NFPA 225 and NFPA 501, references more recent editions of ASCE 7 Standard for Minimum Design Loads for Buildings and Other Structures. The Model Installation Standards must also do this to achieve equivalent protection to manufactured homes and manufactured home residents.

HUD Response: The ASCE 7–88 standard is currently referenced in the HUD Manufactured Home Construction and Safety Standards and is used as the basis for establishing the design load requirements for the construction standards that are referenced in these installation standards. Accordingly, it is not necessary to again reference the ASCE 7 standards in these installation standards.

III. Section-by-Section Revisions—Changes to Proposed Rule

In response to the public comments and subsequent reevaluation by HUD, the following is a summary by subpart of the section-by-section revisions being made to the proposed rule for the Model Installation Standards, 24 CFR part 3285, published in the **Federal Register** on April 26, 2005. An overall editorial change made throughout the rule was to move all tables and figures within a section to the end of the section. This change will promote ease of reference and will simplify the process of amending the rule, as may be necessary, in the future.

Subpart A—General

Section 3285.1(a) in the final rule makes clear that the manufacturers' installation instructions required by § 3285.2, including any specific operation or assembly therein, are deemed to comply with the Model Installation Standards, provided they meet or exceed the minimum requirements in the installation standards and do not take the home out of compliance with the MHCSS. Further, clarifications are also being added to § 3285.1(a) with regard to the applicability of the installation standards to the work necessary to join sections of a multi-section home together. Specifically, work associated with the connection of exterior lights, ceiling-hung light fixtures, or fans, as identified in subpart I, is considered installation. This section is also being modified to clarify that work associated with hinged roofs and eaves in § 3285.801 and other work done on-site and not specifically identified in this part as close-up is not covered by the installation standards and, as such, is subject to the MHCSS and Procedural and Enforcement Regulations.

The applicability provisions in § 3285.1(b) were modified to indicate that the installation standards are not to be construed as relieving manufacturers, retailers, or other parties of responsibility for compliance with other applicable ordinances, codes, regulations, and laws. In addition, the section was revised to indicate that manufactured homes are also subject to the requirements of the Manufactured Home Installation and Dispute Resolution Programs, upon effect. A new provision, § 3285.1(c), has been included in the final rule that requires HUD to seek input from the MHCC when considering future revisions to the installation standards. (See discussion in II, Analysis of Public Comments).

Paragraph (a) of § 3285.2, Manufacturer Installation Instructions, is being revised to clarify that the installation instructions must include all topics covered in the installation standards. This paragraph is also being revised to require the installer to certify that it completed the installation in compliance with the manufacturer's instructions or an alternate design (see paragraph (c)), prepared by the manufacturer or certified by a professional engineer or architect, that provides a level of protection equivalent to or greater than what is required by the installation standards.

A new paragraph § 3285.2(b) is added to specify those circumstances when a professional engineer or registered architect must prepare and certify that the manufacturer's installation instructions meet or exceed the Model Installation Standards for foundation support and anchoring.

The recommended provisions for "variations to manufacturer installation instructions" in subpart J of the proposed rule are being relocated to paragraph (c) of § 3285.2 in the final rule. This will require installers who intend to provide support and anchorage that is either different from the methods specified in the manufacturer's instructions, or that encounter site or other conditions that prevent the use of the instructions, to first attempt to obtain site-specific instructions from the manufacturer or, if not available from the manufacturer, to obtain a design that has been prepared by a professional engineer or architect that is consistent with the design and the MHCSS. The installer must have the professional engineer's or registered architect's design approved by the manufacturer and its DAPIA prior to installation. DAPIA approval is necessary to enable HUD to enforce such modifications to the manufacturer's installation instructions.

A new paragraph (e) is being added to § 3285.2 in the final rule to require the manufacturer to include, as part of its instructions, at least one method for temporarily storing each section of a manufactured home at the manufacturer's facility, retailer's lot, or the home site.

Section 3285.4 is being revised to provide an updated list of the standards being incorporated by reference in the final rule. (See discussion in "V. Revisions to Standards Incorporated by Reference" in this preamble.) Reference standards have the same force and effect as the other Model Installation Standards, except that whenever reference standards and the Model Installation Standards are inconsistent, the requirements of the Model Installation Standards prevail to the extent of the inconsistency.

Certain definitions have been added or modified in § 3285.5 of the final rule for terms used in the Model Installation Standards.

A new section, § 3285.6, "Final leveling of the manufactured home," is being added to require that a home be adequately leveled prior to completion of the installation. A manufactured home is considered to be adequately leveled if there is no more than a ¼-inch difference between adjacent pier supports, and if the exterior windows and doors do not bind and can be operated properly.

Subpart B—Pre-Installation Considerations

The fire separation provisions have been relocated from the recommended provisions in subpart J of the proposed rule and incorporated as part of the minimum requirements in subpart B, § 3285.101, as part of the pre-installation considerations. The final rule requires that fire separation distances be in accordance with NFPA 501A or the requirements of the LAHJ. which could be more or less restrictive than NFPA 501A. This will require compliance with the fire separation distances in NFPA 501A, 2003 edition, whenever there are no requirements established by the LAHJ. Conversely, when the LAHJ has established fire separation distance requirements, the separation distances need not conform to the NFPA 501A provisions.

Additional requirements were added for installation of manufactured homes in flood hazard areas in paragraph (d) of § 3285.102 to include provisions for the installation of exterior appliances.

Section 3285.103 is being revised to clarify that, prior to the initial

installation of a new manufactured home, the installer is to verify that the design and construction of the manufactured home, as indicated on the design zone maps provided with the home, are suitable for the site location where the home is to be installed. In addition, to assist the installer in verifying the appropriate zone location for the specific site, this section is being revised by referring to the county and local government references that further define the wind zone, roof load zone, and thermal zone in part 3280.

Subpart C—Site Preparation

Section 3285.201 is being revised in the final rule to indicate that, after removal of organic material, the home site must be graded or otherwise prepared to ensure adequate drainage.

A pocket penetrometer is now included in the final rule as one of the acceptable methods for determining bearing capacity and soil classification in § 3285.202(d). Furthermore, a new paragraph (e) has also been included in this section that permits the use of an allowable default soil bearing pressure of 1,500 psf, unless site-specific information requires the use of lower soil bearing values.

The site drainage provisions in paragraph (b) of § 3285.203 of the final rule have been revised by adding other alternatives than site grading to remove any water that may collect under the home.

The provisions for gutters and downspouts in paragraph (f) of § 3285.203 have been modified in the final rule to indicate that manufacturers specify in their instructions whether the home is suitable for the installation of gutters and downspouts.

The provisions for ground moisture control have been revised in paragraph (c) of § 3285.204 of the final rule by allowing the required vapor retarder to be installed around or over footings placed at grade and around anchors and by requiring any void or tear in the vapor retarder to be repaired.

Subpart D—Foundations

Section 3285.301(b) of the final rule has been revised to also recognize metal piers as one of the possible variables to the pier and footing specifications and configurations in this subpart.

Section 3285.302 of the final rule has been revised to require all manufactured homes in flood hazard areas to be installed on foundation supports that are designed and anchored to prevent floatation, collapse, or lateral movement of the structure. In addition, manufacturers' instructions must indicate whether or not the foundation specifications have been designed to resist flood loads.

Tables 1, 2, and 3 to § 3285.303 for pier loads have been modified in the final rule by removing all references to allowable soil bearing pressure and footing configurations that were previously associated with the tables and by deleting Figure C to § 3285.312—Footing Configuration Layout Designs that was referenced in each of the tables.

Paragraphs (b) and (c) in § 3285.304 of the final rule are being modified to be consistent with the provisions and notes shown in Figures A and B to § 3285.306(b).

Section 3285.305 has been modified in the final rule by requiring a minimum of 12″ of clearance between the main chassis frame member and the grade and all other areas of the home.

The maximum height for frame and corner piers in § 3285.306(b) and (c) of the final rule has been reduced from 80″ to 67″ to be consistent with the maximum heights shown in the tables for maximum diagonal tie-down strap spacing in Tables 1, 2, and 3 to § 3285.402. Furthermore, mortar is no longer required for this range of pier heights, unless specified in the manufacturer's instructions and the maximum horizontal offset from the top to the bottom of the pier is one inch.

The provisions for elevated homes in the proposed rule are no longer needed and have been deleted and replaced with new paragraph (c) in § 3285.306, "All piers over 67 inches high," in the final rule. Mortar is not required for concrete block piers of this height, unless specified by the design.

A new paragraph (b) has been added to § 3285.308 in the final rule that requires metal or other manufactured piers to be weather-protected against deterioration and corrosion with protection that is at least equivalent to a coating of zinc on steel of at least 0.30 oz./ft^2.

Footnotes were added to Figures A and B to § 3285.310 to require piers to be placed on each side of any mating wall opening when the opening is 48″ or greater in width and to indicate that for roof loads of more than 40 pfs, a professional engineer must determine the maximum mating wall opening permitted without piers or other supports. Footnote 3 was also revised in both figures to indicate that the maximum single stack concrete block pier loads cannot exceed 8,000 lbs.

The requirements for perimeter pier supports are modified by adding a new paragraph (a)(ii) in § 3285.311 of the final rule permitting the use of alternative supports in lieu of perimeter piers such as outriggers or extra floor joists. However, when alternative supports are used, the designs must consider the additional loads in sizing the pier and footing supports under the main chassis beam. In addition, for roof live loads of 40 psf or greater, paragraph (b) of this section requires that a professional engineer or architect determine the maximum sidewall support opening permitted with perimeter pier or other supports.

Footnotes are also modified in the final rule to Figures A and B to § 3285.312, "Typical Blocking Diagrams for Single Section Homes and Multiple Section Homes," to require piers on both sides of exterior sidewall doors, patio doors, sliding glass door openings, under jamb studs at multiple window openings, and other openings of 48″ or greater in width.

The requirements for footings in paragraph (a) and (b) of § 3285.312 of the proposed rule are incorporated into paragraph (a) of this section in the final rule by reducing the minimum compressive strength for 4″ pre-cast concrete pads from 4,000 psi to 1,200 psi; by noting that for 6″ or greater poured-in-place concrete pads, slabs, or ribbons, reinforcing steel may be required for site-specific conditions; by revising the requirements for pressure-treated footings and by changing the specification for their pressure treatment to a water-borne adhesive, in accordance with AWPA Standard U1–04; by requiring ABS footing pads to be certified for use in the soil classification at the site; and by adding new provisions to allow other types of footing materials, provided they are listed for such use and meet all other applicable provisions of the installation standards.

The provisions for placement of footings in freezing climates is being relocated from paragraph (c) in the proposed rule to paragraph (b) in § 3285.312 of the final rule and is being revised to require that footings be designed to resist the effects of frost heave by one of the methods specified in this section. The final rule requires that conventional footings be placed below the frost line, unless an insulated footing or monolithic slab is used. In addition, alternatives allowing insulated footings or monolithic slabs to be placed above and not below the frost line depth must be designed by a professional engineer or architect, in accordance with either acceptable engineering practice or SEI/ASCE 32–01, and not both, as previously indicated in the proposed rule. Furthermore, these alternatives are permitted only if all relevant site conditions such as soil characteristics, site preparation,

ventilation, anchorage requirements, and insulative properties of the underfloor enclosure are considered.

Figure C to § 3285.312 in the proposed rule has been deleted in the final rule, as the footing configuration and layouts shown in the figure were determined to be non-typical of current practices used in installing manufactured homes.

The table for the size and capacity of unreinforced cast-in-place footings in § 3285.312(d) is revised by limiting the maximum capacity of certain footing sizes to 8,000 lbs. and 16,000 lbs., based on the maximum pier capacity of single or multiple stack concrete block piers. A footnote has been added to the table indicating that higher design load capacities may be permitted if a professional engineer or architect prepares the design.

The provisions for permanent foundations in § 3285.314 of the proposed rule have been deleted in the final rule. The requirements for permanent foundations can be adequately considered and addressed under the provisions of the final rule for alternative foundation systems, including the requirement that such designs be prepared by a professional engineer or architect.

Section 3285.315(b) for ramadas in the final rule is revised by requiring them to be self-supporting, except for any weatherproofing connection that is made to the home.

Subpart E—Anchorage Against Wind

A new paragraph (d) has been added to § 3285.401 in the final rule that provides the minimum information and details that must be included in the manufacturers installation instructions for anchor type installations necessary to secure manufactured homes against the wind.

A new paragraph (a) has been added in reorganizing § 3285.402 in the final rule to require each ground anchor to be provided with installation instructions, in accordance with its listing or certification, and to be certified for use in a classified soil, based on a nationally recognized testing protocol. Paragraph (a) of § 3285.402 in the proposed rule has been renumbered as paragraph (b) and has been modified in the final rule to require that anchors be installed to their full depth and that anchors and tie-down straps be protected against corrosion at least equivalent to that provided by a coating of zinc on steel of 0.30 oz./ft^2 of surface coated. This section now also requires that both the working and ultimate load of the ground anchors and anchoring equipment be determined by a professional engineer or registered architect.

Paragraph (b) of § 3285.402 has been renumbered as paragraph (c) in the final rule, and paragraph (c)(1) is revised by indicating that the spacing for ground anchors and straps be no greater than the spacing in the Tables 1 through 3 of this section, unless designed by a professional engineer or registered architect. A professional engineer or registered architect must also prepare the design for any conditions where the tables are not applicable, such as for higher sidewall conditions, or diagonal strap angle-to-ground conditions that are below 30 degrees or exceed 60 degrees, etc. Tables 1 through 3 are also revised by limiting the spacing to applicable conditions for the diagonal strap to between 30 degrees and 60 degrees to the ground.

Paragraph (c)(3) is renumbered as paragraph (c)(2) and the provisions of (ii) in the proposed rule are separated into (ii) and new (iii) of this paragraph in the final rule. In addition, (iii) is also revised to require the correct size and type of stabilizer plate to be installed, if required by the listing, and by allowing the use of ABS stabilizer plates when they are listed and certified for such use.

Paragraph (c)(2) on longitudinal anchoring is renumbered as paragraph (c)(3) and is revised in the final rule by providing a new Figure C as an example of one acceptable method that may be used for longitudinal anchoring and for attaching the longitudinal strap to the ground anchor and main chassis beam of the home.

Section 3285.404 of the final rule is revised to indicate that ground anchors must be installed below the frost line, unless the foundation system is frost-protected to resist the effects of frost heave, in accordance with acceptable engineering practice, § 3280.306 of the MHCSS, and § 3285.312 of these installation standards.

The requirements for anchoring manufactured homes in flood hazard areas in § 3285.406 of the proposed rule have been revised by relocating the requirements to § 3285.102 in the final rule and by adding reference to the relocated section in § 3285.406 of the final rule.

Subpart F—Optional Features

The requirements for optional appliances in § 3285.503 of the final rule are being revised as follows: Paragraph (a)(1)(i) requires site-installed air conditioning equipment to be sized to "meet" the home's heat gain rather than "closely match" the heat gain, as indicated in the proposed rule; paragraph (a)(1)(iii)(A) is revised by requiring A-coil air conditioning type units to be installed in accordance with the appliance manufacturer's instructions and be compatible and listed for use with the furnace installed in the home; a new paragraph (a)(3)(ii) is added for evaporative coolers that are not roof-mounted to be installed in accordance with the more restrictive provisions of the listing or the appliance manufacturer's instructions; and a new paragraph (c) is added for completion of appliance venting systems for compatibility with the requirements of the MHCSS. In addition, the provisions for outside appliances and air inlets in flood hazard areas have been relocated to § 3285.102(d)(2).

The weather protection and pressure treatment requirements for metal and wood skirting are further clarified in § 3285.504(a) and (c) of the final rule.

The provisions for ventilation openings are revised in § 3285.505(d) of the final rule by requiring them to be corrosion- and weather-resistant and to be designed to resist the entry of rodents. In addition, in areas subject to freezing, the openings must be of the adjustable type permitting them to be open or closed, depending on the climatic conditions.

Section 3285.505(f) of the final rule is being revised to require any surface water runoff from the furnace, air conditioning, or water heater drain to be directed away from the home or collected by other methods identified in § 3285.503.

Subpart G—Ductwork and Plumbing and Fuel Supply Systems

Section 3285.606(c)(1) of the final rule is modified to require that the mandatory shutoff valve installed be identified, accessible, and installed between the water supply and inlet.

The test pressure requirements for gas piping systems in § 3285.605(a) of the final rule are revised to be consistent with the testing provisions for fuel piping systems in the MHCSS.

Paragraph (a) of § 3285.606 of the final rule for ductwork connections is revised to require all crossover connections to the main duct system to be sealed to prevent air leakage. Paragraph (e) is also revised to require the crossover duct to be supported by straps spaced at a maximum distance of 4 feet or as otherwise permitted by the installation instructions. In addition, for flexible type ducts, the straps must be at least ½" wider than the metal spirals encasing the duct and be installed so that the duct cannot slip between any two spirals.

Subpart H—Electrical Systems and Equipment

Paragraph (d) of § 3285.702 is revised in the final rule to require that a ceiling paddle fan be connected to a junction box that is listed and marked for ceiling fan application, in accordance with the requirements of the NEC, 2005 edition.

The testing requirements in paragraph (e) of § 3285.702 are also being modified in the final rule to clarify that the electrical system must be inspected and tested at the site after completion of all electrical wiring and connections, lighting, and installation of any ceiling fans.

Subpart I—Exterior and Interior Close-up

Section 3285.801(d) is revised in the final rule to require any holes that are made in the roofing to be made weatherproof and sealed with an exterior sealant that is suitable for use with the roofing material.

The requirements for hinged roofs and eaves in § 3285.801(f) of the final rule are revised to require compliance with all requirements of the MHCSS (24 CFR 3280) and the Manufactured Home Procedural and Enforcement Regulations (24 CFR 3282). While this work is often completed during the set-up of the home, it is not considered to be installation, but work associated with the construction of the home and therefore subject to HUD's MHCSS. As such, certain hinged roofs continue to be subject, as appropriate, to the provisions of Alternative Construction in § 3282.14 and the provisions of the future rulemaking for on-site construction, upon effect. Currently, manufactured homes with hinged roofs are not subject to these special requirements, if the homes are: (1) Designed to be located in Wind Zone I, (2) the pitch of the hinged roof is less than 7/12, and (3) fuel burning appliance flue penetrations are not above the hinge. However, even for the above-described conditions, manufacturers are still responsible for providing instructions on how to complete each hinged roof or eave construction in accordance with the requirements of the MHCSS.

Section 3285.802(c) of the final rule is revised by clarifying that no gaps are permitted between structural elements along the mate-line of multi-section homes upon completion of the exterior close-up. However, the final rule does permit minor gaps, up to one inch, prior to completion of the exterior close-up provided: (1) All such gaps are closed before completion, (2) the home sections are in contact with each other, (3) the mating gasket is providing a proper seal, and (4) all such gaps are shimmed and connected to the structural element(s) with properly sized fasteners.

Section 3285.804 of the final rule is revised by requiring missing insulation to be replaced prior to making any bottom board repairs, any splits or tears to be resealed with tape or patches in accordance with the installation instructions, and by requiring all edges of repaired areas to be taped or otherwise sealed.

Subpart J—Optional Information for Installation Instructions

This subpart of the final rule has been re-titled and reorganized to include recommendations that may be provided as part of the installation instructions. The final rule also clarifies in a new section, § 3285.907, that any other information manufacturers may want to provide in their instructions that is not specifically addressed in this subpart must be consistent with the Model Installation Standards and not take the home out of conformance with the MHCSS.

The general provisions in § 3285.901 are revised by also including "access" to the site as another area that is outside of HUD's authority and that may be governed by the LAHJ.

Provisions addressing variations to manufacturers installation instructions in the proposed rule have been relocated to § 3285.2(b) in the final rule.

Section 3285.902 of the final rule is revised by recommending that the installation instructions include recommendations that the home should not be moved to the site until: (1) The LAHJ is informed, (2) the site is prepared in accordance with Subpart C of the Model Installation Standards, and (3) utilities are available as required by the LAHJ. In addition, recommended provisions for: (1) Positioning the home in the proposed rule have been relocated to § 3285.6 of the final rule, (2) fire separation distances in the proposed rule have been relocated to § 3285.101 in the final rule, and (3) requirements for drainage structures have been relocated under paragraph (b) of this section in the final rule.

Encroachment and setback distances in the proposed rule have been relocated under § 3285.903, "Permits, alterations, and on-site structures," in the final rule. In addition, paragraph (c) of this section in the final rule is modified to indicate that each accessory building and structure is to be designed to support its own live and dead loads, unless the structure is attached to the manufactured home and otherwise included in the installation instructions or designed by a professional engineer or registered architect.

The provisions for utility service connections are renumbered as § 3285.904 in the final rule, and recommendations for procedures to be used prior to making utility service connections are revised in the final rule, as follows: (1) Where both utility services and the LAHJ are available, both should be consulted prior to making any connections of the manufactured home to the utilities; (2) where no LAHJ exists and utility services are available, the utility should be consulted before connecting the manufactured home to any utility service; and (3) in rural areas where no LAHJ or utility services are available, a professional should be consulted prior to making any system connections.

The provisions for heating oil systems are renumbered as § 3285.905 in the final rule and the recommendations for the installation instructions are revised in the final rule to indicate that homes with these systems and storage tanks be tested to in accordance with NFPA 31, Standard for Installation of Oil Burning Equipment, 2001 edition, or, if applicable, to the more stringent requirements of the LAHJ.

The provisions for telephone and cable TV in the proposed rule are renumbered as § 3285.906 in the final rule and it is recommended that the installation instructions explain that these services should be installed in accordance with the requirements of the LAHJ or the NEC, NFPA No. 70–2005.

IV. Revisions to Standards Incorporated by Reference (Reference Standards)

The following is a list of the standards incorporated by reference that is being revised from those in the proposed rule by this final rule.

Added:

AWPA—American Wood-Preservers' Association, P.O. Box 388, Selma, Alabama 36702.

AWPA M4–02, Standard for the Care of Preservative-Treated Wood Products, 2002.

AWPA U1–04, Use Category System; User Specification for Treated Wood, 2004.

APA—The Engineered Wood Association, 7011 South 19th Street, Tacoma, Washington 98411, telephone number (253) 565–6600, fax number (253) 565–7265.

PS1–95, Construction and Industrial Plywood (with typical APA trademarks), 1995 edition.

NFPA Publications—National Fire Protection Association, 1

Batterymarch Park, Quincy, Massachusetts 02169–7471.

NFPA No. 70, National Electrical Code, 2005.

U.L.—Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062.

UL 181A, Standard for Safety Closure Systems for Use with Rigid Air Ducts and Air Connectors, 1994, with 1998 revisions.

UL 181B, Standard for Safety Closure Systems for Use with Flexible Air Ducts and Air Connectors, 1995, with 1998 revisions.

Removed:

AWPA—American Wood-Preservers' Association, P.O. Box 388, Selma, Alabama 36702.

AWPA C2, Standard for the Preservative Treatment of Lumber, Timber, Bridge Ties and Mine Ties, by Pressure Processes, 2001.

AWPA C9, Plywood—Preservative Treatment by Pressure Processes, 2000.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–(800) 877–8339.

Paperwork Reduction Act

The information collection requirements contained in this rule are currently approved by OMB under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0253. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection displays a currently valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and remains applicable to this final rule. The FONSI is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has Federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

HUD is required by statute to establish Model Manufactured Home Installation Standards through the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426). However, in accordance with the language of the Act and as set forth in § 3285.1 of this rule, these Model Installation Standards are not preemptive, but rather establish minimum levels of protection to residents of manufactured homes.

The Model Installation Standards, without the implementing regulations to be developed for the federal installation program, establish requirements for installation instructions, but do not have an impact on state-based installation programs and standards. These minimum requirements do not affect governmental relationships or distribution of power. This rule does not establish any responsibilities for states and localities, but rather establishes minimum requirements to be used by home manufacturers in the design of manufactured home installation instructions. Therefore, HUD has determined that the Model Installation Standards, if adopted, have no federalism implications that warrant the preparation of a Federalism Assessment, in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

HUD has conducted a material and labor cost impact analysis for this rule. The completed cost analysis determines the cost difference between a typical installation conforming to the Model Installation Standards from an installation completed in accordance with current manufacturer installation instructions. A typical installation is defined by the traditional installation method consisting of concrete footings, masonry piers, and ground anchors. The cost difference was found to vary slightly depending upon whether the home is a single-section or multi-section home. HUD has determined the following recommended Installation Standards would potentially affect the cost of the installation of manufactured homes over and above the installation costs currently incurred using the manufacturer's installation instructions:

1. Manufacturer review and revision of its manufactured home installation manual (§ 3285.2).

2. Proper drainage slope away from the home (§ 3285.203).
3. Vapor barrier lap at joints (§ 3285.204).
4. Ensure proper configuration for concrete piers (§ 3285.304).
5. Ensure proper orientation and location of pier supports (§ 3285.306).
6. Certification and testing of ground anchors (§ 3285.402).
7. Water line shut-off valve (§ 3285.603).
8. Crossover duct collar hardware and fasteners (§ 3285.606).

The cost impact for a single-section home is determined to be about $133 per home and the cost impact for a multi-section home is determined to be about $151 per home. Current manufactured home production is about 135,000 homes, consisting of about 40,500 single-section homes and 94,500 multi-section homes. The combined average cost impact is determined to be approximately $145.60 per home multiplied by a total of 135,000 homes produced in a year; this totals about $19.6 million annually.

Based on a current installation cost of about $5,000 for a single-wide home, the $133 increase represents an increase of about 2.7 percent from the current cost of installing a single section home. Similarly, the current cost of installing a multi-section home is about $8,000. Therefore, the cost impact of $151 per multi-section home represents an increase of about 1.9 percent from the current cost. These estimated costs and cost impacts do not represent a significant economic effect on either an industry-wide or per-home basis. These estimates are further limited in the final rule by recognition of the manufacturer's installation instructions, including specific methods for performing an operation or assembly, as being deemed to comply with the Model Installation Standards and, as a result, may avoid the need to possibly change certain practices in existing instructions in order to comply with the installation standards.

This small increase in total cost associated with this rule would not impose a significant burden for a small business. The rule would regulate establishments primarily engaged in making manufactured homes (NAICS 32991) and the mobile home set-up and tie-down establishments (installers) included within the definition of all other special trade contractors (NAICS 23599). Of the 222 firms included under the NAICS 32991 definition, 198 are small manufacturers that fall below the small business threshold of 500 employees. Of the 31,320 firms included under NAICS 23599 definition, only 53 firms exceed the small business threshold of 500 employees and none of these are primarily mobile home set-up and tie-down establishments. The rule thus would affect a substantial number of small entities. However, the home manufacturers would only be subject to an associated labor cost necessary to revise its instructions, and the home installer would be subject to increased labor and material costs that would be passed through to the end user (manufactured home purchaser). Moreover, because the great majority of manufacturers and all installers are considered small entities, there would not be any disproportional impact on small entities. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. Further, the benefits to the consumer and public from the increase in cost may be summarized as follows:

- Under the new standards, substantial damage due to moisture infiltration will be mitigated, thereby avoiding repair and remedy that could cost the homeowner hundreds to thousands of dollars, depending upon the severity of the damage.
- The new standard will require proper configuration, location, and construction of piers to increase occupant and public safety.
- The new provisions for certification and testing of ground anchors has the potential to prevent occupant injury or death resulting from ground anchor installations that utilize insufficient or under-performing ground anchors.
- The new requirement for a water line shut-off valve provides both safety and convenience for the occupant. The absence of a water line shut-off valve can potentially cause hundreds to thousands of dollars in water damage.
- The new standard will require galvanized screws and galvanized collars to secure site-installed ducting to factory provided connectors, thereby providing for a durable and weather-protected connection that can withstand the elements without premature failure and replacement. Replacement of the connectors and fastenings per home can total about $30 per home, including $10 in materials cost and $20 in labor costs.
- The requirement for manufacturer review and revision of installation instructions and subsequent third-party approval of the installation instructions will provide a positive impact on occupant and general public safety.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule does not provide an exemption for small entities. This rule does not establish any responsibilities for installers; rather, it establishes model requirements used by manufacturers in the design of manufactured home installation instructions.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number is 14.171.

List of Subjects

24 CFR Part 3280

Construction, Housing standards, Incorporation by reference, Manufactured homes, Safety.

24 CFR Part 3285

Housing standards, Incorporation by reference, Installation, Manufactured homes.

■ Accordingly, HUD amends 24 CFR part 3280 and adds 24 CFR part 3285 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for 24 CFR part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.302, add the definitions of anchor assembly, foundation system, and support system in alphabetical order and revise the definitions of anchoring equipment, anchoring system, diagonal tie, ground anchor, and stabilizing devices to read as follows:

§ 3280.302 Definitions.

* * * * *

Anchor assembly means any device or other means designed to transfer home anchoring loads to the ground.

Anchoring equipment means ties, straps, cables, turnbuckles, chains, and other approved components, including tensioning devices that are used to secure a manufactured home to anchor assemblies.

Anchoring system means a combination of anchoring equipment and anchor assemblies that will, when properly designed and installed, resist the uplift, overturning, and lateral forces on the manufactured home and on its support and foundation system.

Diagonal tie means a tie intended to resist horizontal or shear forces, but which may resist vertical, uplift, and overturning forces.

* * * * *

Foundation system means a system of support that is capable of transferring all

design loads to the ground, including elements of the support system as defined in this section, or a site-built permanent foundation that meets the requirements of 24 CFR 3282.12.

Ground anchor means a specific anchoring assembly device designed to transfer home anchoring loads to the ground.

* * * * *

Stabilizing devices means all components of the anchoring and support systems, such as piers, footings, ties, anchoring equipment, anchoring assemblies, or any other equipment, materials, and methods of construction that support and secure the manufactured home to the ground.

* * * * *

Support system means any pilings, columns, footings, piers, foundation walls, shims, and any combination thereof that, when properly installed, support the manufactured home.

■ 3. In § 3280.306, revise paragraphs (b)(2)(iii) and (iv) to read as follows:

§ 3280.306 Windstorm protection.

* * * * *

(b) * * *

(2) * * *

(iii) That ground anchors are to be embedded below the frost line, unless the foundation system is frost-protected in accordance with §§ 3285.312(b) and 3285.404 of the Model Manufactured Home Installation Standards in this chapter.

(iv) That ground anchors must be installed to their full depth, and stabilizer plates must be installed in accordance with the ground anchor listing or certification to provide required resistance to overturning and sliding.

* * * * *

■ 4. In Chapter XX, add part 3285 to read as follows:

PART 3285—MODEL MANUFACTURED HOME INSTALLATION STANDARDS

Subpart A—General

Authority: 42 U.S.C. 3535(d), 5403, 5404, and 5424.

Subpart A—General

§ 3285.1 Administration.

(a) *Scope.* These Model Installation Standards provide minimum requirements for the initial installation of new manufactured homes, in accordance with section 605 of the Act (42 U.S.C. 5404). The Model Installation Standards are one component of the Manufactured Home Installation Program in Part 3286 of this chapter, upon effect, and serve as the basis for developing the manufacturers' installation instructions required by § 3285.2 of this subpart. The manufacturer's installation instructions, including specific methods for performing a specific operation or assembly, will be deemed to comply with these Model Installation Standards, provided they meet or exceed the minimum requirements of these Model Installation Standards and do not take the home out of compliance with the Manufactured Home Construction and Safety Standards (24 CFR part 3280). Work necessary to join all sections of a multi-section home specifically identified in Subparts G, H, and I of this part, or work associated with connecting exterior lights, chain-hung light fixtures, or ceiling-suspended fans, as specifically identified in Subpart I, is not considered assembly or construction of the home, although the design of those elements of a manufactured home must comply with the Manufactured Home Construction and Safety Standards (MHCSS). However, work associated with the completion of hinged roofs and eaves in § 3285.801 and other work done on-site and not specifically identified in this part as close-up is considered construction and assembly and is subject to the requirements of the Manufactured Home Construction and Safety Standards (24 CFR part 3280) and the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282).

(1) States that choose to operate an installation program for manufactured homes in lieu of the federal program must implement installation standards that provide protection to its residents that equals or exceeds the protection provided by these Model Installation Standards.

(2) In states that do not choose to operate their own installation program

for manufactured homes, these Model Installation Standards serve as the minimum standards for manufactured home installations.

(b) *Applicability.* The standards set forth herein have been established to accomplish certain basic objectives and are not to be construed as relieving manufacturers, retailers, installers, or other parties of responsibility for compliance with other applicable ordinances, codes, regulations, and laws. The manufactured homes covered by this standard must comply with requirements of the U.S. Department of Housing and Urban Development's (HUD) MHCSS Program, as set forth in 24 CFR part 3280, Manufactured Home Construction and Safety Standards, and 24 CFR part 3282, Manufactured Home Procedural and Enforcement Regulations, as well as with, upon effect, the Manufactured Home Installation Program, 24 CFR part 3286, and the Dispute Resolution Program, 24 CFR part 3288. The requirements of this part do not apply to homes installed on site-built permanent foundations when the manufacturer certifies the home in accordance with § 3282.12 of this chapter.

(c) *Consultation with the Manufactured Housing Consensus Committee.* The Secretary will seek input from the Manufactured Housing Consensus Committee (MHCC) when revising the installation standards in this part 3285. Before publication of a proposed rule to revise the installation standards, the Secretary will provide the MHCC with a 120-day opportunity to comment on such revision. The MHCC may send to the Secretary any of the MHCC's own recommendations to adopt new installation standards or to modify or repeal any of the installation standards in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. The Secretary will either:

(1) Accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or

(2) Reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection.

§ 3285.2 Manufacturer installation instructions.

(a) *Instructions required.* A manufacturer must provide with each new manufactured home, installation designs and instructions that have been approved by the Secretary or DAPIA. The approved installation instructions must include all topics covered in the Model Installation Standards for the installation of manufactured homes. These installation instructions and any variations thereto that are prepared to comply with paragraph (c) of this section must provide protection to residents of the manufactured homes that equals or exceeds the protection provided by these Model Installation Standards and must not take the manufactured home out of compliance with the MHCSS. These instructions must insure that each home will be supported and anchored in a manner that is capable of meeting or exceeding the design loads required by the MHCSS.

(b) *Professional engineer or registered architect certification.* A professional engineer or registered architect must prepare and certify that the manufacturer's installation instructions meet or exceed the Model Installation Standards for foundation support and anchoring whenever:

(1) The manufacturer's installation instructions do not conform in their entirety to the minimum requirements or tables or their conditions for foundation support and anchoring of this Standard; or

(2) An alternative foundation system or anchoring system is employed, including designs for basements and perimeter support foundation systems, whether or not it is included in the installation instructions; or

(3) Materials such as metal piers or alternatives to concrete footing materials are required by the installation instructions; or

(4) Foundation support and anchoring systems are designed for use in areas subject to freezing or for use in areas subject to flood damage or high seismic risk; or

(5) Foundations support and anchoring systems are designed to be used in special snow load conditions or in severe wind design areas; or

(6) Site conditions do not allow the use of the manufacturer's installation instructions; or

(7) There are any other circumstances in which the manufacturer's installation instructions would not permit the home to be installed in conformance with the Installation Standards or the MHCSS.

(c) *Variations to installation instructions.*

(1) Before an installer provides support or anchorage that are different than those methods specified in the manufacturer's installation instructions, or when the installer encounters site or other conditions (such as areas that are subject to flood damage or high seismic risk) that prevent the use of the instructions, the installer must:

(i) First attempt to obtain DAPIA-approved designs and instructions prepared by the manufacturer; or

(ii) If designs and instructions are not available from the manufacturer, obtain an alternate design prepared and certified by a registered professional engineer or registered architect for the support and anchorage of the manufactured home that is consistent with the manufactured home design, conforms to the requirements of the MHCSS, and has been approved by the manufacturer and the DAPIA.

(2) The manufacturer's installation instructions must include an explanation of the requirement in paragraph (c)(1) of this section.

(d) *Installer certification.* In making the certification of the installation required under part 3286 of this chapter, upon effect, an installer must certify that it completed the installation in compliance with either the manufacturer's instructions or with an alternate installation design and instructions that have been prepared by the manufacturer or prepared in compliance with paragraph (c) of this section.

(e) *Temporary storage.* The installation instructions must provide at least one method for temporarily supporting each transportable section of a manufactured home, to prevent structural and other damage to the structure, when those section(s) are temporarily sited at the manufacturer's facility, retailer's lot, or the home site.

§ 3285.3 Alterations during initial installation.

Additions, modifications, or replacement or removal of any equipment that affects the installation of the home made by the manufacturer, retailer, or installer prior to completion of the installation by an installer must equal or exceed the protections and requirements of these Model Installation Standards, the MHCSS (24 CFR part 3280) and the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282). An alteration, as defined in § 3282.7 of this chapter, must not affect the ability of the basic manufactured home to comply with the MHCSS, and the alteration must not impose additional loads to the manufactured home or its foundation, unless the alteration is included in the manufacturer's DAPIA-approved designs and installation instructions, or is designed by a registered professional engineer or architect consistent with the manufacturer's design and that

conforms to the requirements of the MHCSS.

§ 3285.4 Incorporation by reference (IBR).

(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. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of Manufactured Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

(b) The materials listed below are available for purchase from the Air Conditioning Contractors of America (ACCA), 2800 Shirlington Road, Suite 300, Arlington, Virginia 22206.

(1) ACCA Manual J, Residential Load Calculation, 8th Edition, IBR approved for § 3285.503(a)(1)(i)(A).

(2) [Reserved]

(c) The materials listed below are available for purchase from APA—The Engineered Wood Association, 7011 South 19th Street, Tacoma, Washington 98411, telephone number (253) 565–6600, fax number (253) 565–7265.

(1) PS1–95, Construction and Industrial Plywood (with typical APA trademarks), 1995 edition, IBR approved for § 3285.312(a)(2)(i).

(2) [Reserved]

(d) The materials listed below are available for purchase from American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), 1791 Tullie Circle, NE., Atlanta, Georgia 30329–2305.

(1) ASHRAE Handbook of Fundamentals, 1997 Inch-Pound Edition, IBR approved for § 3285.503(a)(1)(i)(A).

(2) [Reserved]

(e) The materials listed below are available for purchase from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959.

(1) ASTM C 90–02a, Standard Specification for Loadbearing Concrete Masonry Units, 2002, IBR approved for § 3285.312(a)(1)(i).

(2) ASTM D 1586–99, Standard Test Method for Penetration Test and Split-Barrel Sampling of Soils, 1999, IBR approved for the table at § 3285.202(c).

(3) ASTM D 2487–00, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System), 2000, IBR approved for the table at § 3285.202(c).

(4) ASTM D 2488–00, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), 2000, IBR approved for the table at § 3285.202(c).

(5) ASTM D 3953–97, Standard Specification for Strapping, Flat Steel and Seals, 1997, IBR approved for § 3285.402(b)(2) and Note 10 to Table 1 to § 3285.402.

(f) The materials listed below are available for purchase from American Wood-Preservers' Association (AWPA), P.O. Box 388, Selma, Alabama 36702.

(1) AWPA M4–02, Standard for the Care of Preservative-Treated Wood Products, 2002, IBR approved for § 3285.312(a)(2)(iii).

(2) AWPA U1–04, Use Category System; User Specification for Treated Wood, 2004, IBR approved for §§ 3285.303(b)(1), 3285.312(a)(2)(ii), and 3285.504(c).

(g) The materials listed below are available for purchase from the Federal Emergency Management Administration (FEMA), 500 C Street, SW., Washington, DC 20472.

(1) FEMA 85/September 1985, Manufactured Home Installation in Flood Hazard Areas, 1985, IBR approved for § 3285.102(d)(3).

(2) [Reserved]

(h) The materials listed below are available for purchase from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

(1) NFPA 31, Standard for the Installation of Oil Burning Equipment, 2001 edition, IBR approved for §§ 3285.905(a) and 3285.905(d)(3).

(2) NFPA 70, National Electrical Code, 2005 edition, IBR approved for §§ 3285.702(e)(1) and 3285.906.

(3) NFPA 501A, Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities, 2003 edition, IBR approved for § 3285.101.

(i) The materials listed below are available for purchase from the Structural Engineering Institute/American Society of Civil Engineers (SEI/ASCE), 1801 Alexander Bell Drive, Reston, Virginia 20191.

(1) SEI/ASCE 32–01, Design and Construction of Frost-Protected Shallow Foundations, 2001, IBR approved for §§ 3285.312(b)(2)(ii) and 3285.312(b)(3)(ii).

(2) [Reserved]

(j) The materials listed below are available for purchase from Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062.

(1) UL 181A, Closure Systems for Use With Rigid Air Ducts and Air Connectors, 1994, with 1998 revisions, IBR approved for § 3285.606(a).

(2) UL 181B, Closure Systems for Use With Flexible Air Ducts and Air Connectors, 1995, with 1998 revisions, IBR approved for § 3285.606(a).

§ 3285.5 Definitions.

The definitions contained in this section apply to the terms used in these Model Installation Standards. Where terms are not included, common usage of the terms applies. The definitions are as follows:

Act. The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426.

Anchor assembly. Any device or other means designed to transfer home anchoring loads to the ground.

Anchoring equipment. Ties, straps, cables, turnbuckles, chains, and other approved components, including tensioning devices that are used to secure a manufactured home to anchor assemblies.

Anchoring system. A combination of anchoring equipment and anchor assemblies that will, when properly designed and installed, resist the uplift, overturning, and lateral forces on the manufactured home and on its support and foundation system.

Approved. When used in connection with any material, appliance or construction, means complying with the requirements of the Department of Housing and Urban Development.

Arid region. An area subject to 15 inches or less of annual rainfall.

Base flood. The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE). The elevation of the base flood, including wave height, relative to the datum specified on a LAHJ's flood hazard map.

Comfort cooling certificate. A certificate permanently affixed to an interior surface of the home specifying the factory design and preparations for air conditioning the manufactured home.

Crossovers. Utility interconnections in multi-section homes that are located where the sections are joined. Crossover connections include heating and cooling ducts, electrical circuits, water pipes, drain plumbing, and gas lines.

Design Approval Primary Inspection Agency (DAPIA). A state or private organization that has been accepted by the Secretary in accordance with the

requirements of Part 3282, Subpart H of this chapter, which evaluates and approves or disapproves manufactured home designs and quality control procedures.

Diagonal tie. A tie intended to resist horizontal or shear forces, but which may resist vertical, uplift, and overturning forces.

Flood hazard area. The greater of either: The special flood hazard area shown on the flood insurance rate map; or the area subject to flooding during the design flood and shown on a LAHJ's flood hazard map, or otherwise legally designated.

Flood hazard map. A map delineating the flood hazard area and adopted by a LAHJ.

Footing. That portion of the support system that transmits loads directly to the soil.

Foundation system. A system of support that is capable of transferring all design loads to the ground, including elements of the support system, as defined in this section, or a site-built permanent foundation that meets the requirements of 24 CFR 3282.12.

Ground anchor. A specific anchoring assembly device designed to transfer home anchoring loads to the ground.

Installation instructions. DAPIA-approved instructions provided by the home manufacturer that accompany each new manufactured home and detail the home manufacturer requirements for support and anchoring systems, and other work completed at the installation site to comply with these Model Installation Standards and the Manufactured Home Construction and Safety Standards in 24 CFR part 3280.

Installation standards. Reasonable specifications for the installation of a new manufactured home, at the place of occupancy, to ensure proper siting; the joining of all sections of the home; and the installation of stabilization, support, or anchoring systems.

Labeled. A label, symbol, or other identifying mark of a nationally recognized testing laboratory, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling is indicated compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

Listed or certified. Included in a list published by a nationally recognized testing laboratory, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

Local authority having jurisdiction (LAHJ). The state, city, county, city and county, municipality, utility, or organization that has local responsibilities and requirements that must be complied with during the installation of a manufactured home.

Lowest floor. The floor of the lowest enclosed area of a manufactured home. An unfinished or flood-resistant enclosure, used solely for vehicle parking, home access, or limited storage, must not be considered the lowest floor, provided the enclosed area is not constructed so as to render the home in violation of the flood-related provisions of this standard.

Manufactured home. A structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or which when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements, except the size requirements and with respect to which the manufacturer voluntarily files a certification, pursuant to § 3282.13 of this chapter, and complies with the MHCSS set forth in part 3280 of this chapter. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on-site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b) certification.

Manufactured Home Construction and Safety Standards or MHCSS. The Manufactured Home Construction and Safety Standards established in part 3280 of this chapter, pursuant to section 604 of the Act, 42 U.S.C. 5403.

Manufactured home gas supply connector. A listed connector designed for connecting the manufactured home to the gas supply source.

Manufactured home site. A designated parcel of land designed for the installation of one manufactured home for the exclusive use of the occupants of the home.

Manufactured Housing Consensus Committee or MHCC. The consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

Model Installation Standards. The installation standards established in part 3285 of this chapter, pursuant to section 605 of the Act, 42 U.S.C. 5404.

Pier. That portion of the support system between the footing and the manufactured home, exclusive of shims. Types of piers include, but are not limited to: Manufactured steel stands; pressure-treated wood; manufactured concrete stands; concrete blocks; and portions of foundation walls.

Ramada. Any freestanding roof or shade structure, installed or erected above a manufactured home or any portion thereof.

Secretary. The Secretary of Housing and Urban Development, or an official of HUD delegated the authority of the Secretary with respect to the Act.

Skirting. A weather-resistant material used to enclose the perimeter, under the living area of the home, from the bottom of the manufactured home to grade.

Stabilizing devices. All components of the anchoring and support systems, such as piers, footings, ties, anchoring equipment, anchoring assemblies, or any other equipment, materials. and methods of construction, that support and secure the manufactured home to the ground.

State. Each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

Support system. Pilings, columns, footings, piers, foundation walls, shims, and any combination thereof that. when properly installed, support the manufactured home.

Tie. Straps, cable, or securing devices used to connect the manufactured home to anchoring assemblies.

Ultimate load. The absolute maximum magnitude of load that a component or system can sustain, limited only by failure.

Utility connection. The connection of the manufactured home to utilities that include, but are not limited to, electricity, water, sewer, gas, or fuel oil.

Vertical tie. A tie intended to resist uplifting and overturning forces.

Wind zone. The areas designated on the Basic Wind Zone Map, as further defined in § 3280.305(c) of the Manufactured Home Construction and Safety Standards in this chapter, which delineate the wind design load requirements.

Working load. The maximum recommended load that may be exerted on a component or system determined by dividing the ultimate load of a component or system by an appropriate factor of safety.

§ 3285.6 Final leveling of manufactured home.

The manufactured home must be adequately leveled prior to completion of the installation, so that the home's performance will not be adversely affected. The home will be considered adequately leveled if there is no more than ¼ inch difference between adjacent pier supports (frame or perimeter) and the exterior doors and windows of the home do not bind and can be properly operated.

Subpart B—Pre-Installation Considerations

§ 3285.101 Fire separation.

Fire separation distances must be in accordance with the requirements of Chapter 6 of NFPA 501A, 2003 edition (incorporated by reference, see § 3285.4) or the requirements of the LAHJ. The installation instructions must clearly indicate this requirement in a separate section and must caution installers to take into account any local requirements on fire separation.

§ 3285.102 Installation of manufactured homes in flood hazard areas.

(a) *Definitions.* Except to the extent otherwise defined in Subpart A, the terms used in this subpart are as defined in 44 CFR 59.1 of the National Flood Insurance Program (NFIP) regulations.

(b) *Applicability.* The provisions of this section apply to the initial installation of new manufactured homes located wholly or partly within a flood hazard area.

(c) *Pre-installation considerations.* Prior to the initial installation of a new manufactured home, the installer is responsible for determining whether the manufactured home site lies wholly or partly within a special flood hazard area as shown on the LAHJ's Flood Insurance Rate Map, Flood Boundary and Floodway Map, or Flood Hazard Boundary Map, or if no LAHJ, in accordance with NFIP regulations. If so located, and before an installation method is agreed upon, the map and supporting studies adopted by the LAHJ must be used to determine the flood hazard zone and base flood elevation at the site.

(d) *General elevation and foundation requirements.*

(1) *Methods and practices.* Manufactured homes located wholly or partly within special flood hazard areas must be installed on foundations engineered to incorporate methods and practices that minimize flood damage during the base flood, in accordance with the requirements of the LAHJ, 44 CFR 60.3(a) through (e), and other provisions of 44 CFR referenced by those paragraphs.

(2) *Outside appliances.*

(i) Appliances installed on the manufactured home site in flood hazard areas must be anchored and elevated to or above the same elevation as the lowest elevation of the lowest floor of the home.

(ii) Appliance air inlets and exhausts in flood hazard areas must be located at or above the same elevation as the lowest elevation of the lowest floor of the home.

(3) *Related guidance.* Refer to FEMA 85/September 1985, Manufactured Home Installation in Flood Hazard Areas, 1985 (incorporated by reference, see § 3285.4).

§ 3285.103 Site suitability with design zone maps.

Prior to the initial installation of a new manufactured home and as part of making the certification of the installation required under part 3286, upon effect, the installer is to verify that the design and construction of the manufactured home, as indicated on the design zone maps provided with the home, are suitable for the site location where the home is to be installed. The design zone maps are those identified in part 3280 of this chapter.

(a) *Wind zone.* Manufactured homes must not be installed in a wind zone that exceeds the design wind loads for which the home has been designed, as evidenced by the wind zone indicated on the home's data plate and as further defined by counties or local governments within affected states, as applicable, in § 3280.305(c)(2) of the Manufactured Home Construction and Safety Standards in this chapter.

(b) *Roof load zone.* Manufactured homes must not be located in a roof load zone that exceeds the design roof load for which the home has been designed, as evidenced by the roof load zone indicated on the home's data plate and as further defined by counties or local governments within affected states, as applicable, in § 3280.305(c)(3) of the Manufactured Home Construction and Safety Standards in this chapter. Refer to § 3285.315 for Special Snow Load Conditions.

(c) *Thermal zone.* Manufactured homes must not be installed in a thermal zone that exceeds the thermal zone for which the home has been designed, as evidenced by the thermal zone indicated on the heating/cooling certificate and insulation zone map and as further defined by counties or local governments within affected states, as applicable, in § 3280.504(b)(5) of the Manufactured Home Construction and Safety Standards in this chapter. The manufacturer may provide the heating/cooling information and insulation zone map on the home's data plate.

§ 3285.104 Moving manufactured home to location.

Refer to § 3285.902 for considerations related to moving the manufactured home to the site of installation.

§ 3285.105 Permits, other alterations, and on-site structures.

Refer to § 3285.903 for considerations related to permitting, other alterations, and on-site structures.

Subpart C—Site Preparation

§ 3285.201 Soil conditions.

To help prevent settling or sagging, the foundation must be constructed on firm, undisturbed soil or fill compacted to at least 90 percent of its maximum relative density. All organic material such as grass, roots, twigs, and wood scraps must be removed in areas where footings are to be placed. After removal of organic material, the home site must be graded or otherwise prepared to ensure adequate drainage, in accordance with § 3285.203.

§ 3285.202 Soil classifications and bearing capacity.

The soil classification and bearing capacity of the soil must be determined before the foundation is constructed and anchored. The soil classification and bearing capacity must be determined by one or more of the following methods, unless the soil bearing capacity is established as permitted in paragraph (f) of this section:

(a) *Soil tests.* Soil tests that are in accordance with generally accepted engineering practice; or

(b) *Soil records.* Soil records of the applicable LAHJ; or

(c) *Soil classifications and bearing capacities.* If the soil class or bearing capacity cannot be determined by test or soil records, but its type can be identified, the soil classification, allowable pressures, and torque values shown in Table to § 3285.202 may be used.

(d) A pocket penetrometer; or

(e) In lieu of determining the soil bearing capacity by use of the methods shown in the table, an allowable pressure of 1,500 psf may be used, unless the site-specific information requires the use of lower values based on soil classification and type.

(f) If the soil appears to be composed of peat, organic clays, or uncompacted fill, or appears to have unusual conditions, a registered professional geologist, registered professional engineer, or registered architect must determine the soil classification and maximum allowable soil bearing capacity.

TABLE TO § 3285.202

Soil classification		Soil description	Allowable soil bearing pressure (psf) [1]	Blow count ASTM D 1586–99	Torque probe [3] value [4] (inch-pounds)-
Classification number	ASTM D 2487–00 or D 2488–00 (incorporated by reference, see § 3285.4)				
1		Rock or hard pan	4000+		
2	GW, GP, SW, SP, GM, SM.	Sandy gravel and gravel; very than dense and/or cemented sands; course gravel/ cobbles; preloaded silts, clays and coral.	2000	40+	More than 550.
3	GC, SC, ML, CL	Sand; silty sand; clayey sand; silty gravel; medium dense course sands; sandy gravel; and very stiff silt, sand clays.	1500	24–39	351–550.
4A	CG, MH [2]	Loose to medium dense sands; firm to stiff clays and silts; alluvial fills.	1000	18–23	276–350.
4B	CH, MH [2]	Loose sands; firm clays; alluvial fills	1000	12–17	175–275.
5	OL, OH, PT	Uncompacted fill; peat; organic clays	Refer to 3285.202(e)	0–11	Less than 175.

Notes:

[1] The values provided in this table have not been adjusted for overburden pressure, embedment depth, water table height, or settlement problems.

[2] For soils classified as CH or MH, without either torque probe values or blow count test results, selected anchors must be rated for a 4B soil.

[3] The torque test probe is a device for measuring the torque value of soils to assist in evaluating the holding capacity of the soil in which the ground anchor is placed. The shaft must be of suitable length for the full depth of the ground anchor.

[4] The torque value is a measure of the load resistance provided by the soil when subject to the turning or twisting force of the probe.

§ 3285.203 Site Drainage.

(a) *Purpose.* Drainage must be provided to direct surface water away from the home to protect against erosion of foundation supports and to prevent water build-up under the home, as shown in Figure to § 3285.203.

(b) The home site must be graded as shown in Figure to § 3285.203, or other methods, such as a drain tile and automatic sump pump system, must be provided to remove any water that may collect under the home.

(c) All drainage must be diverted away from the home and must slope a minimum of one-half inch per foot away from the foundation for the first ten feet. Where property lines, walls, slopes, or other physical conditions prohibit this slope, the site must be provided with drains or swales or otherwise graded to drain water away from the structure, as shown in Figure to § 3285.203.

(d) *Sloped site considerations.* The home, where sited, must be protected from surface runoff from the surrounding area.

(e) Refer to § 3285.902 regarding the use of drainage structures to drain surface runoff.

(f) *Gutters and downspouts.* Manufacturers must specify in their installation instructions whether the home is suitable for the installation of gutters and downspouts. If suitable, the installation instructions must indicate that when gutters and downspouts are installed, the runoff must be directed away from the home.

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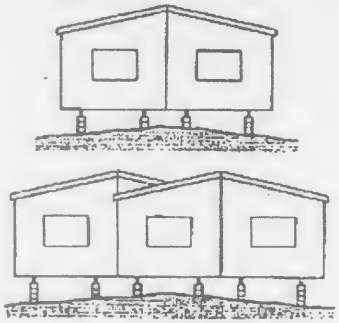
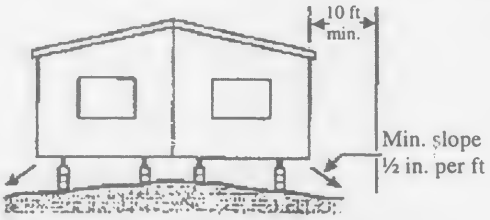
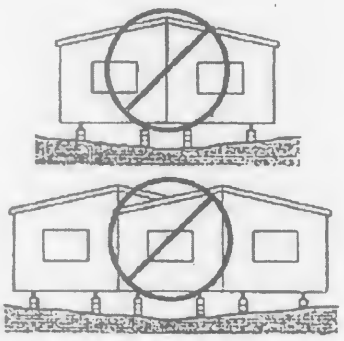
Figure to § 3285.203 - Grading and drainage.



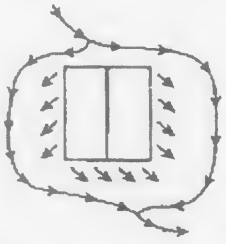
Crown and grade site to slope away from the home



Home sites must be prepared so that there will be no depressions in which surface water may accumulate beneath the home. The area of the site covered by the manufactured home must be graded, sloped, or designed to provide drainage from beneath the home or to the property line.



Do not grade site or set the home so that water collects beneath the home.



Natural drainage must be diverted around and away from the home.

§ 3285.204 Ground moisture control.

(a) *Vapor retarder.* If the space under the home is to be enclosed with skirting or other materials, a vapor retarder must be installed to cover the ground under the home, unless the home is installed in an arid region with dry soil conditions.

(b) *Vapor retarder material.* A minimum of six mil polyethylene sheeting or its equivalent must be used.

(c) *Proper installation.* (1) The entire area under the home must be covered with the vapor retarder, as noted in § 3285.204(a), except for areas under open porches, decks, and recessed entries. Joints in the vapor retarder must be overlapped at least 12 inches.

(2) The vapor retarder may be placed directly beneath footings, or otherwise installed around or over footings placed at grade, and around anchors or other obstructions.

(3) Any voids or tears in the vapor retarder must be repaired. At least one repair method must be provided in the manufacturer's installation instructions.

Subpart D—Foundations

§ 3285.301 General.

(a) Foundations for manufactured home installations must be designed and constructed in accordance with this subpart and must be based on site conditions, home design features, and the loads the home was designed to withstand, as shown on the home's data plate.

(b) Foundation systems that are not pier and footing type configurations may be used when verified by engineering data and designed in accordance with § 3285.301(d), consistent with the design loads of the MHCSS. Pier and footing specifications that are different than those provided in this subpart, such as block size, metal piers, section width, loads, and spacing, may be used when verified by engineering data that comply with §§ 3285.301(c) and (d) and are capable of resisting all design loads of the MHCSS.

(c) All foundation details, plans, and test data must be designed and certified by a registered professional engineer or registered architect, and must not take the home out of compliance with the MHCSS. (See 3285.2)

(d) Alternative foundation systems or designs are permitted in accordance with either of the following:

(1) Systems or designs must be manufactured and installed in accordance with their listings by a nationally recognized testing agency, based on a nationally recognized testing protocol; or

(2) System designs must be prepared by a professional engineer or a registered architect or tested and certified by a professional engineer or registered architect in accordance with acceptable engineering practice and must be manufactured and installed so as not to take the home out of compliance with the Manufactured Home Construction and Safety Standards (part 3280 of this chapter).

§ 3285.302 Flood hazard areas.

In flood hazard areas, foundations, anchorings, and support systems must be capable of resisting loads associated with design flood and wind events or combined wind and flood events, and homes must be installed on foundation supports that are designed and anchored to prevent floatation, collapse, or lateral movement of the structure. Manufacturer's installation instructions must indicate whether:

(a) The foundation specifications have been designed for flood-resistant considerations, and, if so, the conditions of applicability for velocities, depths, or wave action; or

(b) The foundation specifications are not designed to address flood loads.

§ 3285.303 Piers.

(a) *General.* The piers used must be capable of transmitting the vertical live and dead loads to the footings or foundation.

(b) *Acceptable piers—materials specification.*

(1) Piers are permitted to be concrete blocks; pressure-treated wood with a water borne preservative, in accordance with AWPA Standard U1–04 (incorporated by reference, see § 3285.4) for Use Category 4B ground contact applications; or adjustable metal or concrete piers.

(2) Manufactured piers must be listed or labeled for the required vertical load capacity, and, where required by design, for the appropriate horizontal load capacity.

(c) *Design requirements.*

(1) *Load-bearing capacity.* The load bearing capacity for each pier must be designed to include consideration for the dimensions of the home, the design dead and live loads, the spacing of the piers, and the way the piers are used to support the home.

(2) Center beam/mating wall support must be required for multi-section homes and designs must be consistent with Tables 2 and 3 to § 3285.303 and Figures A, B, and C to § 3285.310.

(d) *Pier loads.*

(1) Design support configurations for the pier loads, pier spacing, and roof live loads must be in accordance with Tables 1, 2, and 3 to § 3285.303 and the MHCSS. Other pier designs are permitted in accordance with the provisions of this subpart.

(2) Manufactured piers must be rated at least to the loads required to safely support the dead and live loads, as required by § 3285.301, and the installation instructions for those piers must be consistent with Tables 1, 2, and 3 to this section.

TABLE 1 TO § 3285.303—FRAME BLOCKING ONLY/PERIMETER SUPPORT NOT REQUIRED EXCEPT AT OPENINGS

Pier spacing	Roof live load (psf)	Location	Load (lbs.)
4 ft. 0 in.	20	Frame	2,900
	30	Frame	3,300
	40	Frame	3,600
6 ft. 0 in.	20	Frame	4,200
	30	Frame	4,700
	40	Frame	5,200
8 ft. 0 in.	20	Frame	5,500
	30	Frame	6,200
	40	Frame	6,900
10 ft. 0 in.	20	Frame	6,800
	30	Frame	7,600

TABLE 1 TO § 3285.303—FRAME BLOCKING ONLY/PERIMETER SUPPORT NOT REQUIRED EXCEPT AT OPENINGS

Pier spacing	Roof live load (psf)	Location	Load (lbs.)
	40	Frame	8,500

Notes:

1. See Table to § 3285.312 for cast-in-place footing design by using the noted loads.
2. Table 1 is based on the following design assumptions: maximum 16 ft. nominal section width (15 ft. actual width), 12" eave, 10" I-beam size, 300 lbs. pier dead load, 10 psf roof dead load, 6 psf floor dead load, 35 plf wall dead load, and 10 plf chassis dead load.
3. Interpolation for other pier spacing is permitted.
4. The pier spacing and loads shown in the above table do not consider flood or seismic loads and are not intended for use in flood or seismic hazard areas. In those areas, the foundation support system is to be designed by a professional engineer or architect.
5. See Table to § 3285.312 for sizing of footings.

TABLE 2 TO § 3285.303—FRAME PLUS PERIMETER BLOCKING/PERIMETER BLOCKING REQUIRED

Maximum pier spacing	Roof live load (psf)	Location	Load (lbs.)
4 ft. 0 in.	20	Frame	1,400
		Perimeter	1,900
		Mating	3,200
4 ft. 0 in.	30	Frame	1,400
		Perimeter	2,300
		Mating	3,800
4 ft. 0 in.	40	Frame	1,400
		Perimeter	2,600
		Mating	4,400
6 ft. 0 in.	20	Frame	1,900
		Perimeter	2,700
		Mating	4,700
6 ft. 0 in.	30	Frame	1,900
		Perimeter	3,200
		Mating	5,600
6 ft. 0 in.	40	Frame	1,900
		Perimeter	3,700
		Mating	6,500
8 ft. 0 in.	20	Frame	2,400
		Perimeter	3,500
		Mating	6,100
8 ft. 0 in.	30	Frame	2,400
		Perimeter	4,200
		Mating	7,300
8 ft. 0 in.	40	Frame	2,400
		Perimeter	4,800
		Mating	8,500
10 ft. 0 in.	20	Frame	2,900
		Perimeter	4,300
		Mating	7,600
10 ft. 0 in.	30	Frame	2,900
		Perimeter	5,100
		Mating	9,100
10 ft. 0 in.	40	Frame	2,900
		Perimeter	6,000
		Mating	10,600

Notes:

1. See Table to § 3285.312 for cast-in-place footing design by using the noted loads.
2. Mating wall perimeter piers and footings only required under full height mating walls supporting roof loads. Refer to Figures A and B to § 3285.310.
3. Table 2 is based on the following design assumptions: maximum 16 ft. nominal section width (15 ft. actual width), 12" eave, 10" I-beam size, 300 lbs. pier dead load, 10 psf roof dead load, 6 psf floor dead load, 35 plf wall dead load, and 10 plf chassis dead load.

4. Interpolation for other pier spacing is permitted.

5. The pier spacing and loads shown in the above table do not consider flood or seismic loads and are not intended for use in flood or seismic hazard areas. In those areas, the foundation support system is to be designed by a professional engineer or architect.

6. See Table to § 3285.312 for sizing of footings.

TABLE 3 TO § 3285.303—RIDGE BEAM SPAN FOOTING CAPACITY

Mating wall opening (ft)	Roof live load (psf)	Pier and footing load (lbs.)
5	20	1,200
	30	1,600
	40	1,900
10	20	2,300
	30	3,100
	40	3,800
15	20	3,500
	30	4,700
	40	5,800
20	20	4,700
	30	6,200
	40	7,500
25	20	5,800
	30	7,800
	40	9,700
30	20	7,000
	30	9,300
	40	11,600
35	20	8,100
	30	10,900
	40	13,600

Notes:

1. See Table to § 3285.312 for cast-in-place footing design by using the noted loads.

2. Table 3 is based on the following design assumptions: maximum 16 ft. nominal section width (15 ft. actual width), 10" I-beam size, 300 lbs. pier dead load, 10 psf roof dead load, 6 psf floor dead load, 35 plf wall dead load, and 10 plf chassis dead load.

3. Loads listed are maximum column loads for each section of the manufactured home.

4. Interpolation for maximum allowable pier and column loads is permitted for mate-line openings between those shown in the table.

5. The pier spacing and loads shown in the above table do not consider flood or seismic loads and are not intended for use in flood or seismic hazard areas. In those areas, the foundation support system must be designed by a professional engineer or registered architect.

6. See Table to § 3285.312 for sizing of footings.

§ 3285.304 Pier configuration.

(a) *Concrete blocks.* Installation instructions for concrete block piers must be developed in accordance with the following provisions and must be consistent with Figures A and B to § 3285.306.

(1) Load-bearing (not decorative) concrete blocks must have nominal dimensions of at least 8 inches × 8 inches × 16 inches;

(2) The concrete blocks must be stacked with their hollow cells aligned vertically; and

(3) When piers are constructed of blocks stacked side-by-side, each layer must be at right angles to the preceding one, as shown in Figure B to § 3285.306.

(b) *Caps.* (1) Structural loads must be evenly distributed across capped-hollow block piers, as shown in Figures A and B to § 3285.306.

(2) Caps must be solid concrete or masonry at least 4 inches in nominal thickness, or hardboard lumber at least 2 inches nominal in thickness; or be corrosion-protected minimum one-half inch thick steel; or be of other listed materials.

(3) All caps must be of the same length and width as the piers on which they rest.

(4) When split caps are used on double-stacked blocks, the caps must be installed with the long dimension across the joint in the blocks below.

(c) *Gaps.* Any gaps that occur during installation between the bottom of the main chassis beam and foundation support system must be filled by:

(1) Nominal 4 inch × 6 inch × 1 inch shims to level the home and fill any gaps between the base of the main chassis beam and the top of the pier cap;

(2) Shims must be used in pairs, as shown in Figures A and B to § 3285.306, and must be driven in tightly so that they do not occupy more than one inch of vertical height; and

(3) Hardwood plates no thicker than 2 inches nominal in thickness or 2 inch or 4 inch nominal concrete block must be used to fill in any remaining vertical gaps.

(d) *Manufactured pier heights.* Manufactured pier heights must be selected so that the adjustable risers do not extend more than 2 inches when finally positioned.

§ 3285.305 Clearance under homes.

A minimum clearance of 12 inches must be maintained between the lowest member of the main frame (I-beam or channel beam) and the grade under all areas of the home.

§ 3285.306 Design procedures for concrete block piers.

(a) *Frame piers less than 36 inches high.*

(1) Frame piers less than 36 inches high are permitted to be constructed of single, open, or closed-cell concrete blocks, 8 inches " 8 inches " 16 inches, when the design capacity of the block is not exceeded.

(2) The frame piers must be installed so that the long sides are at right angles to the supported I-beam, as shown in Figure A to this section.

(3) The concrete blocks must be stacked with their hollow cells aligned vertically and must be positioned at right angles to the footings.

(4) Horizontal offsets from the top to the bottom of the pier must not exceed one-half inch.

(5) Mortar is not required, unless specified in the installation instructions or required by a registered professional engineer or registered architect.

(b) *Frame piers 36 inches to 67 inches high and corner piers.*

(1) All frame piers between 36 inches and 67 inches high and all corner piers over three blocks high must be constructed out of double, interlocked concrete blocks, as shown in Figure B to this section, when the design capacity of the block is not exceeded. Mortar is not required for concrete block piers, unless otherwise specified in the installation instructions or required by a professional engineer or registered architect.

(2) Horizontal offsets from the top to the bottom of the pier must not exceed one inch.

(c) *All piers over 67 inches high.* Piers over 67 inches high must be designed by a registered professional engineer or registered architect, in accordance with acceptable engineering practice. Mortar is not required for concrete block piers, unless otherwise specified in the manufacturer installation instructions or by the design.

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Figure A to § 3285.306 Typical Footing and Pier Design, Single Concrete Block.

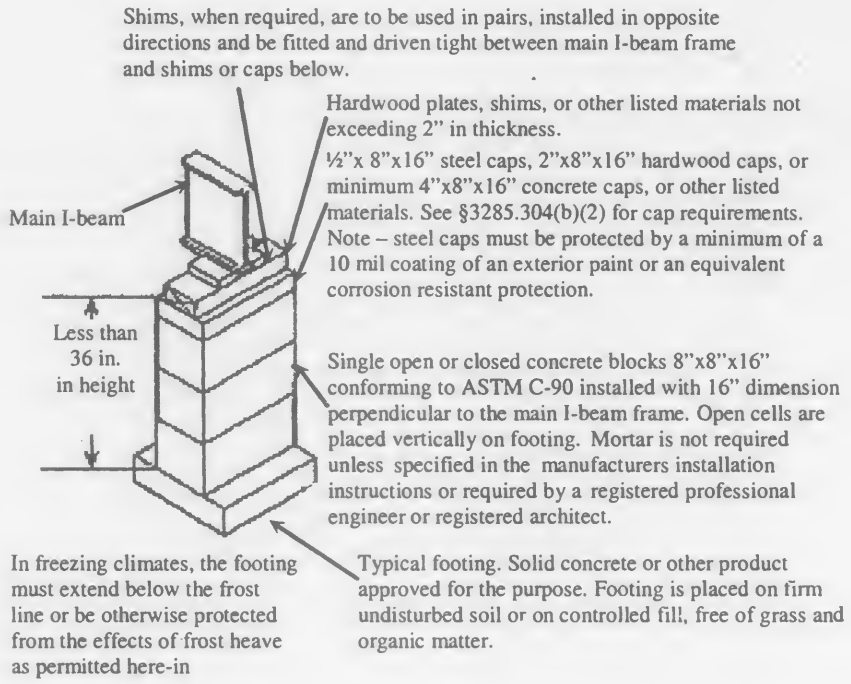
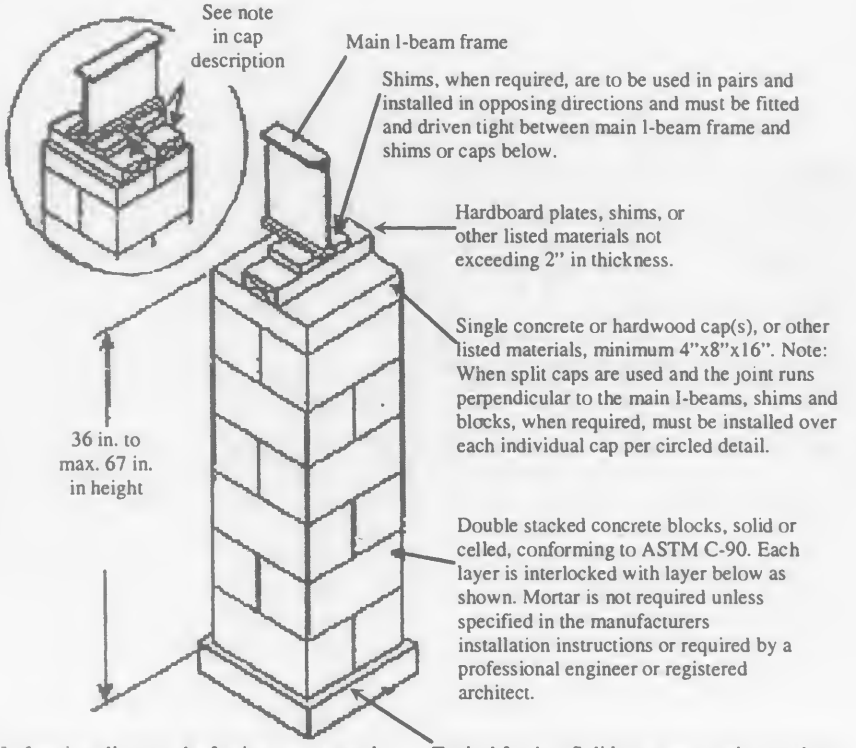


Figure B to 3285.306(b) Typical Footing and Pier Installation, Double Concrete Block.



§ 3285.307 Perimeter support piers.

(a) Piers required at mate-line supports, perimeter piers, and piers at exterior wall openings are permitted to be constructed of single open-cell or closed-cell concrete blocks, with nominal dimensions of 8 inches × 8 inches × 16 inches, to a maximum height of 54 inches, as shown in Figure A to this section, when the design capacity of the block is not exceeded.

(b) Piers used for perimeter support must be installed with the long dimension parallel to the perimeter rail.

§ 3285.308 Manufactured piers.

(a) Manufactured piers must be listed and labeled and installed to the pier manufacturer's installation instructions. See § 3285.303(d)(2) for additional requirements.

(b) Metal or other manufactured piers must be provided with protection against weather deterioration and corrosion at least equivalent to that provided by a coating of zinc on steel of .30 oz./ft.^{2} of surface coated.

§ 3285.309 [Reserved]

§ 3285.310 Pier location and spacing.

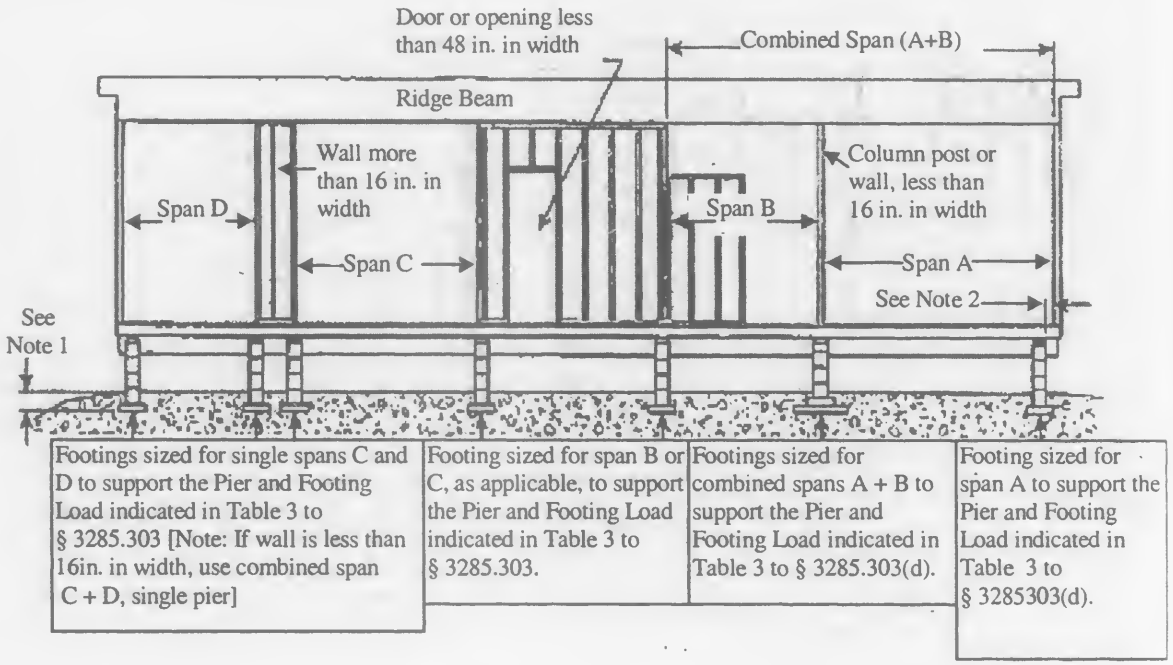
(a) The location and spacing of piers depends upon the dimensions of the home, the live and dead loads, the type of construction (single-or multi-section), I-beam size, soil bearing capacity, footing size, and such other factors as the location of doors or other openings.

(b) Mate-line and column pier supports must be in accordance with this subpart and consistent with Figures A through C to this section, unless the pier support and footing configuration is designed by a registered professional engineer or registered architect.

(c) Piers supporting the frame must be no more than 24 inches from both ends and not more than 120 inches center to center under the main rails.

(d) *Pier support locations.* Pier support locations and spacing must be presented to be consistent with Figures A and B to § 3285.312, as applicable, unless alternative designs are provided by a professional engineer or registered architect in accordance with acceptable engineering practice.

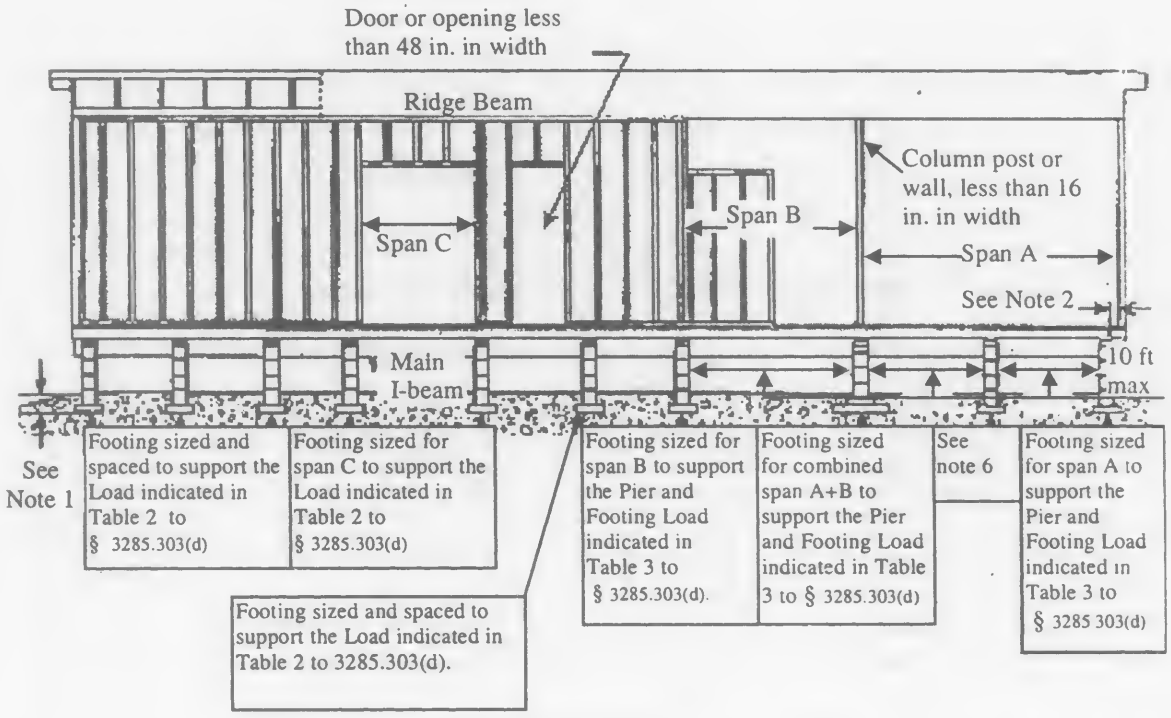
Figure A to § 3285.310 Typical Mate-Line Column Pier and Mating Wall Support when Frame Only Blocking is Required.



Notes:

1. Bottom of footings must extend below frost line depth, unless designed for placement above the frost line. (See § 3285.312(b)).
2. Piers may be offset up to 6 in. in either direction along the supported members to allow for plumbing, electrical, mechanical, equipment, crawlspaces, or other devices.
3. Single-stack concrete block pier loads must not exceed 8,000 lbs.
4. Prefabricated piers must not exceed their approved or listed maximum vertical or horizontal design loads.
5. When a full-height mating wall does not support the ridge beam, this area is considered an unsupported span—Span B.
6. Piers are not required at openings in the mating wall that are less than 48 inches in width. Place piers on both sides of mating wall openings that are 48 inches or greater in width. For roof loads of 40 psf or greater, a professional engineer or registered architect must determine the maximum mating wall opening permitted without pier or other supports.

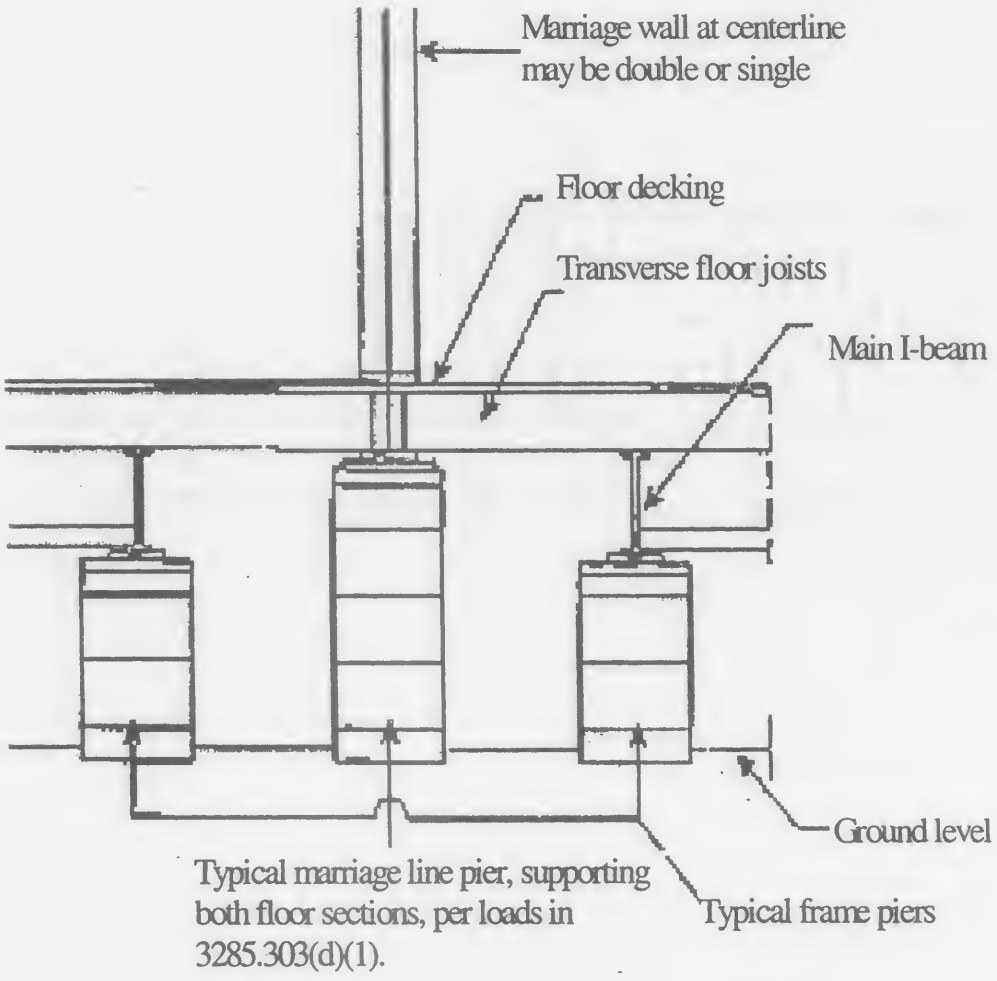
Figure B to § 3285.310(b) Typical Mate-Line Column Pier and Mating Wall Support When Perimeter Blocking is Required.



Notes:

1. Bottom of footings must be below the frost line depth, unless designed for placement above the frost line. (See § 3285.312(b)).
2. Piers may be offset 6 in. in either direction along supported members to allow for plumbing electrical, mechanical equipment, crawlspaces, or other devices.
3. Single stack concrete block pier loads must not exceed 8,000 lbs.
4. Piers are not required at openings in the mating wall that are less than 48 inches in width. Place piers on both sides of mating wall openings that are 48 inches or greater in width. For roof loads of 40 psf or greater, a professional engineer or registered architect must determine the maximum mating wall opening permitted without pier or other supports.
5. When a full-height mating wall does not support the ridge beam, this area is considered an unsupported span—Span B.
6. In areas where the open span is greater than 10 ft., intermediate piers and footings must be placed at maximum 10 ft. on center.
7. Prefabricated piers must not exceed their approved or listed maximum horizontal or vertical design loads.
8. Column piers are in addition to piers required under full-height mating walls.

Figure C to § 3285.310 Typical Mate-Line Column and Piers.



Notes:

1. Mate-line column support piers are installed with the long dimension of the concrete block perpendicular to the rim joists.

2. Pier and footing designed to support both floor sections. Loads as listed in Table 3 to § 3285.303 are total column loads for both sections.

§ 3285.311 Required perimeter supports.

(a) Perimeter pier or other supports must be located as follows:

(1) On both sides of side wall exterior doors (such as entry, patio, and sliding glass doors) and any other side wall openings of 48 inches or greater in width, and under load-bearing porch posts, factory installed fireplaces, and fireplace stoves).

(2) Other perimeter supports must be:

(i) Located in accordance with Table 2 to § 3285.303; or

(ii) Provided by other means such as additional outriggers or floor joists. When this alternative is used, the designs required by § 3285.301 must consider the additional loads in sizing the pier and footing supports under the main chassis beam.

(b) For roof live loads of 40 psf or greater, a professional engineer or architect must determine the maximum sidewall opening permitted without perimeter pier or other supports.

(c) The location and installation of any perimeter pier support must not take the home out of compliance with the Manufactured Home Construction and Safety Standards (part 3280 of this chapter).

§ 3285.312 Footings.

(a) Materials approved for footings must provide equal load-bearing capacity and resistance to decay, as required by this section. Footings must be placed on undisturbed soil or fill compacted to 90 percent of maximum relative density. A footing must support every pier. Footings are to be either:

(1) *Concrete.*

(i) Four inch nominal precast concrete pads meeting or exceeding ASTM C 90–02a, Standard Specification for Loadbearing Concrete Masonry Units (incorporated by reference, see § 3285.4), without reinforcement, with at least a 28-day compressive strength of 1,200 pounds per square inch (psi); or

(ii) Six inch minimum poured-in-place concrete pads, slabs, or ribbons with at least a 28-day compressive

strength of 3,000 pounds per square inch (psi). Site-specific soil conditions or design load requirements may also require the use of reinforcing steel in cast-in-place concrete footings.

(2) *Pressure-treated wood.*

(i) Pressure-treated wood footings must consist of a minimum of two layers of nominal 2-inch thick pressure-treated wood, a single layer of nominal ¾-inch thick, pressure-treated plywood with a maximum size of 16 inches by 16 inches, or at least two layers of ¾-inch thick, pressure-treated plywood for sizes greater than 16 inches by 16 inches. Plywood used for this purpose is to be rated exposure 1 or exterior sheathing, in accordance with PS1=95, Construction and Industrial Plywood (incorporated by reference, see § 3285.4).

(ii) Pressure treated lumber is to be treated with a water-borne adhesive, in accordance with AWPA Standard U1–04 (incorporated by reference, see § 3285.4) for Use Category 4B ground contact applications.

(iii) Cut ends of pressure treated lumber must be field-treated, in accordance with AWPA Standard M4–02 (incorporated by reference, see § 3285.4).

(3) *ABS footing pads.*

(i) ABS footing pads are permitted, provided they are installed in accordance with the pad manufacturer installation instructions and certified for use in the soil classification at the site.

(ii) ABS footing pads must be listed or labeled for the required load capacity.

(4) Other Materials. Footings may be of other materials than those identified in this section, provided they are listed for such use and meet all other applicable requirements of this subpart.

(b) *Placement in freezing climates.* Footings placed in freezing climates must be designed using methods and practices that prevent the effects of frost heave by one of the following methods:

(1) Conventional footings. Conventional footings must be placed below the frost line depth for the site unless an insulated foundation or monolithic slab is used (refer to §§ 3285.312(b)(2) and 3285.312(b)(3)). When the frost line depth is not available from the LAHJ, a registered professional engineer, registered architect, or registered geologist must be consulted to determine the required frost line depth for the manufactured home site. This is not subject to the provisions in § 3285.2(c) that also require review by the manufacturer and approval by its DAPIA for any variations to the manufacturer's installation instructions for support and anchoring.

(2) *Monolithic slab systems.* A monolithic slab is permitted above the frost line when all relevant site-specific conditions, including soil characteristics, site preparation, ventilation, and insulative properties of the under floor enclosure, are considered and anchorage requirements are accommodated as set out in § 3285.401. The monolithic slab system must be designed by a registered professional engineer or registered architect:

(i) In accordance with acceptable engineering practice to prevent the effects of frost heave; or

(ii) In accordance with SEI/ASCE 32–01 (incorporated by reference, see § 3285.4).

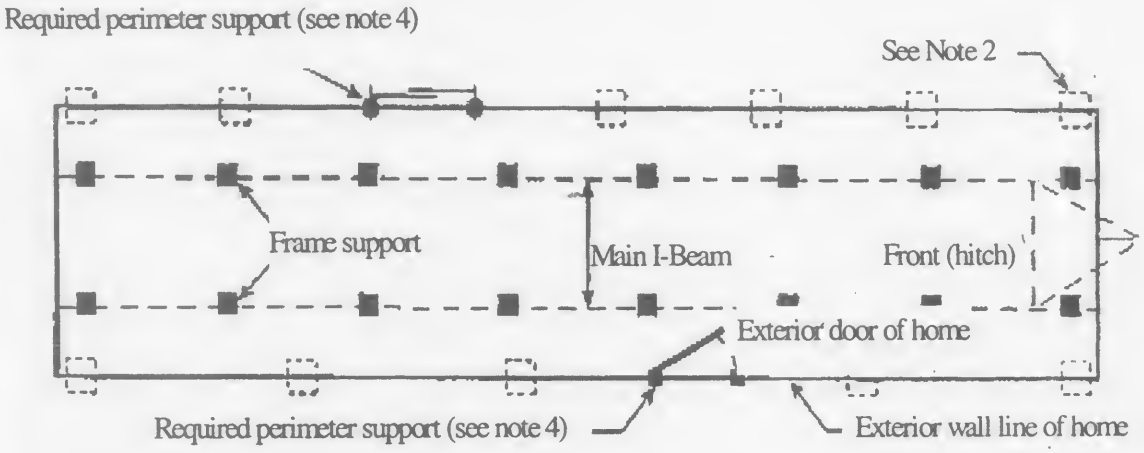
(3) *Insulated foundations.* An insulated foundation is permitted above the frost line, when all relevant site-specific conditions, including soil characteristics, site preparation, ventilation, and insulative properties of the under floor enclosure, are considered, and the foundation is designed by a registered professional engineer or registered architect:

(i) In accordance with acceptable engineering practice to prevent the effects of frost heave; or

(ii) In accordance with SEI/ASCE 32–01 (incorporated by reference, see § 3285.4).

(c) *Sizing of footings.* The sizing and layout of footings depends on the load-bearing capacity of the soil, footings, and the piers. See §§ 3285.202 and 3285.303, and Table to 3285.312.

Figure A to § 3285.312 Typical Blocking Diagram for Single Section Homes



Notes:

1. Refer to Table 1 of § 3285.303 for pier and footing requirements when frame blocking only is used.

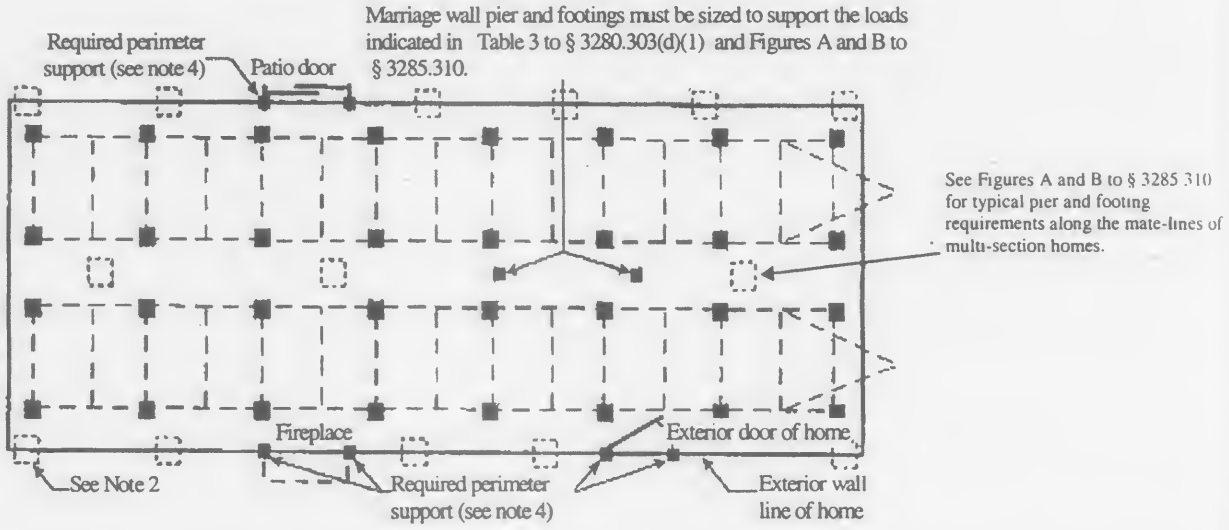
2. In addition to blocking required by § 3285.311, see Table 2 to § 3285.303 for maximum perimeter blocking loads.

3. End piers under main I-beams may be set back a maximum of 24 inches, as measured from the outside edge of the floor to the center of the pier.

4. Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors; under porch posts, factory-installed

fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings 48 inches or greater in width. For roof loads of 40 psf or greater, a professional engineer or registered architect must determine the maximum sidewall opening permitted without perimeter supports. See §§ 3285.307 and 3285.311 for additional requirements and for locating perimeter supports.

Figure B to § 3285.312 Typical Blocking Diagram for Multi-section Home.



1. Refer to Table 1 to § 3285.303 for pier and footing requirements when frame blocking only is used.

2. In addition to blocking required by § 3285.311, see Tables 2 and 3 to § 3285.303 for maximum perimeter blocking loads.

3. End piers under main I-beams may be set back a maximum of 24 inches, as measured from the outside edge of the floor to the center of the pier.

4. Place piers on both sides of sidewall exterior doors, patio doors, and sliding glass doors; under porch posts, factory-installed fireplaces, and fireplace stoves; under jamb studs at multiple window openings; and at any other sidewall openings of 48 inches or greater in width. For roof loads of 40 psf or greater, a professional engineer or registered architect must determine the maximum side wall opening permitted without perimeter supports or mating wall opening permitted without pier or other supports. See §§ 3285.307 and 3285.311 for additional information on requirements and for locating perimeter supports.

5. When an end pier under the mate-line also serves as a column pier, it may be set back a maximum of 6 in., as measured from the inside edge of the exterior wall to the center of the pier.

TABLE TO § 3285.312.—THE SIZE AND CAPACITY FOR UNREINFORCED CAST-IN-PLACE FOOTINGS

Soil capacity (psf)	Minimum footing size (in.)	8 in. x 16 in. pier		16 in. x 16 in. pier	
		Maximum footing capacity (lbs.)	Unreinforced cast-in-place minimum thickness (in.)	Maximum footing capacity (lbs.)	Unreinforced cast-in-place minimum thickness (in.)
1,000	16 x 16	1,600	6	1,600	6
	20 x 20	2,600	6	2,600	6
	24 x 24	3,700	6	3,700	6
	30 x 30	5,600	8	5,800	6
	36 x 36	7,900	10	8,100	8
	42 x 42	[4]10,700	10	10,700	10
	48 x 48	[4]13,100	12	13,600	10
1,500	16 x 16	2,500	6	2,500	6
	20 x 20	4,000	6	4,000	6
	24 x 24	5,600	8	5,700	6
	30 x 30	[4]8,500	10	8,900	8
	36 x 36	[4]12,400	10	12,600	8
	42 x 42	[4]16,500	12	[4]16,800	10
	48 x 48	[4]21,200	14	[4]21,600	12
2,000	16 x 16	3,400	6	3,400	6
	20 x 20	5,300	6	5,300	6
	24 x 24	7,600	8	7,700	6

TABLE TO § 3285.312.—THE SIZE AND CAPACITY FOR UNREINFORCED CAST-IN-PLACE FOOTINGS—Continued

Soil capacity (psf)	Minimum footing size (in.)	8 in. x 16 in. pier		16 in. x 16 in. pier	
		Maximum footing capacity (lbs.)	Unreinforced cast-in-place minimum thickness (in.)	Maximum footing capacity (lbs.)	Unreinforced cast-in-place minimum thickness (in.)
	30 x 30	[4] 11,700	10	11,900	8
	36 x 36	[4] 16,700	15	[4] 16,900	10
	42 x 42	[4] 21,700	18	[4] 22,700	12
2,500	16 x 16	4,300	6	4,300	6
	20 x 20	6,700	6	6,700	6
	24 x 24	[4] 9,600	8	9,700	6
	30 x 30	[4] 14,800	10	15,000	8
	36 x 36	[4] 20,700	12	[4] 21,400	10
3,000	16 x 16	5,200	6	5,200	6
	20 x 20	8,100	8	8,100	6
	24 x 24	[4] 11,500	10	11,700	6
	30 x 30	[4] 17,800	12	[4] 18,100	8
	36 x 36	[4] 25,400	14	[4] 25,900	10
4,000	16 x 16	7,000	6	7,000	6
	20 x 20	[4] 10,800	8	10,900	6
	24 x 24	[4] 15,500	10	15,600	8
	30 x 30	[4] 23,300	12	[4] 24,200	10

Notes:

1. The footing sizes shown are for square pads and are based on the area (in.^{2}), shear and bending required for the loads shown. Other configurations, such as rectangular or circular configurations, can be used, provided the area and depth is equal to or greater than the area and depth of the square footing shown in the table, and the distance from the edge of the pier to the edge of the footing is not less than the thickness of the footing.

2. The 6 in. cast-in-place values can be used for 4 in. unreinforced precast concrete footings.

3. The capacity values listed have been reduced by the dead load of the concrete footing.

4. Concrete block piers must not exceed their design capacity of 8,000 lbs. for 8″ x 16″ single stack block and 16,000 lbs. for 16″ x 16″ double stack block.

5. A registered professional engineer or registered architect must prepare the design, if the design loads exceed the capacity for single or double stack concrete block piers shown in footnote 4.

§ 3285.313 Combination systems.

Support systems that combine both load-bearing capacity and uplift resistance must also be sized and designed for all applicable design loads.

§ 3285.314 [Reserved]

§ 3285.315 Special snow load conditions.

(a) *General.* Foundations for homes designed for and located in areas with roof live loads greater than 40 psf must be designed by the manufacturer for the special snow load conditions, in accordance with acceptable engineering practice. Where site or other conditions prohibit the use of the manufacturer's instructions, a registered professional engineer or registered architect must design the foundation for the special snow load conditions.

(b) *Ramadas.* Ramadas may be used in areas with roof live loads greater than 40 psf. Ramadas are to be self-supporting, except that any connection to the home must be for weatherproofing only.

Subpart E—Anchorage Against Wind

§ 3285.401 Anchoring instructions.

(a) After blocking and leveling, the manufactured home must be secured against the wind by use of anchor assembly type installations or by connecting the home to an alternative foundation system. See § 3285.301.

(b) For anchor assembly type installations, the installation instructions must require the home to be secured against the wind, as described in this section. The installation instructions and design for anchor type assemblies must be prepared by a registered professional engineer or registered architect, in accordance with acceptable engineering practice, the design loads of the MHCSS, and § 3285.301(d).

(c) All anchoring and foundation systems must be capable of meeting the loads that the home was designed to withstand required by part 3280, subpart D of this chapter, as shown on the home's data plate. Exception: Manufactured homes that are installed in less restrictive roof load zone and wind zone areas may have foundation or anchorage systems that are capable of meeting the lower design load provisions of the Standards, if the design for the lower requirements is either provided in the installation instructions or the foundation and anchorage system is designed by a professional engineer or registered architect.

(d) The installation instructions are to include at least the following information and details for anchor assembly-type installations:

(1) The maximum spacing for installing diagonal ties and any required vertical ties or straps to ground anchors;

(2) The minimum and maximum angles or dimensions for installing diagonal ties or straps to ground anchors and the main chassis members of the manufactured home;

(3) Requirements for connecting the diagonal ties to the main chassis members of the manufactured home. If the diagonal ties are attached to the bottom flange of the main chassis beam, the frame must be designed to prevent rotation of the beam;

(4) Requirements for longitudinal and mating wall tie-downs and anchorage;

(5) The method of strap attachment to the main chassis member and ground anchor, including provisions for swivel-type connections;

(6) The methods for protecting vertical and diagonal strapping at sharp corners by use of radius clips or other means; and

(7) As applicable, the requirements for sizing and installation of stabilizer plates.

§ 3285.402 Ground anchor installations.

(a) *Ground anchor certification and testing.* Each ground anchor must be manufactured and provided with

installation instructions, in accordance with its listing or certification. A nationally recognized testing agency must list, or a registered professional engineer or registered architect must certify, the ground anchor for use in a classified soil (refer to § 3285.202), based on a nationally recognized testing protocol, or a professional engineer or registered architect must certify that the ground anchor is capable of resisting all loads in paragraph (b) of this section for the soil type or classification.

(b) *Specifications for tie-down straps and ground anchors.*

(1) *Ground anchors.* Ground anchors must be installed in accordance with their listing or certification, be installed to their full depth, be provided with protection against weather deterioration and corrosion at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft.^{2} of surface coated, and be capable of resisting a minimum ultimate load of 4,725 lbs. and a working load of 3,150 lbs., as installed, unless reduced capacities are noted in accordance with note 11 of Table 1 to this section or note 12 of Tables 2 and 3 to this section. The ultimate load and working load of ground anchors and anchoring equipment must be determined by a registered professional engineer, registered architect, or tested by a nationally recognized third-party testing agency in accordance with a nationally recognized testing protocol.

(2) *Tie-down straps.* A 1¼ inch x 0.035 inch or larger steel strapping conforming to ASTM D 3953—97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3285.4), Type 1, Grade 1, Finish B, with a minimum total capacity of 4,725 pounds (lbs.) and a working capacity of 3,150 pounds (lbs.) must be used. The tie-down straps must be provided with protection against weather deterioration and corrosion at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft.^{2} of surface coated. Slit or cut edges of coated strapping need not be zinc coated.

(c) *Number and location of ground anchors.*

(1) Ground anchor and anchor strap spacing must be:

(i) No greater than the spacing shown in Tables 1 through 3 to this section and Figures A and B to this section; or

(ii) Designed by a registered engineer or architect, in accordance with acceptable engineering practice and the requirements of the MHCSS for any conditions that are outside the parameters and applicability of the Tables 1 through 3 to this section.

(2) The requirements in paragraph (c) of this section must be used to determine the maximum spacing of ground anchors and their accompanying anchor straps, based on the soil classification determined in accordance with § 3285.202:

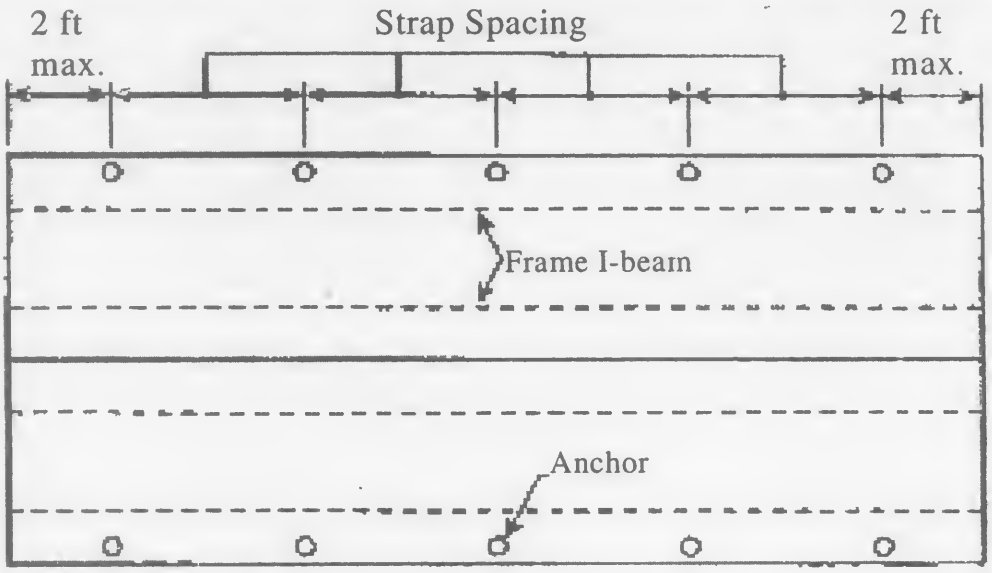
(i) The installed ground anchor type and size (length) must be listed for use in the soil class at the site and for the minimum and maximum angle permitted between the diagonal strap and the ground; and

(ii) All ground anchors must be installed in accordance with their listing or certification and the ground anchor manufacturer installation instructions; and

(iii) If required by the ground anchor listing or certification, the correct size and type of stabilizer plate is installed. If metal stabilizer plates are used, they must be provided with protection against weather deterioration and corrosion at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft.2 of surface coated. Alternatively, ABS stabilizer plates may be used when listed and certified for such use.

(3) *Longitudinal anchoring.* Manufactured homes must also be stabilized against wind in the longitudinal direction in all Wind Zones. Manufactured homes located in Wind Zones II and III must have longitudinal ground anchors installed on the ends of the manufactured home transportable section(s) or be provided with alternative systems that are capable of resisting wind forces in the longitudinal direction. See Figure C to § 3285.402 for an example of one method that may be used to provide longitudinal anchoring. A professional engineer or registered architect must certify the longitudinal anchoring method or any alternative system used as adequate to provide the required stabilization, in accordance with acceptable engineering practice.

Figure A to § 3285.402 Ground Anchor Locations and Spacing – Plan View.

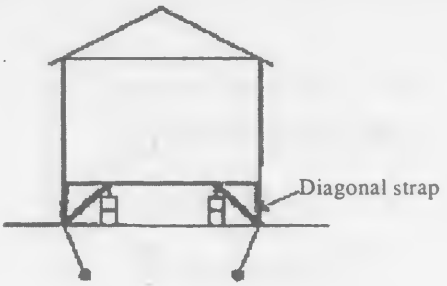


Notes:

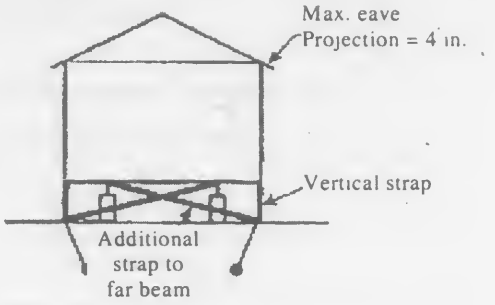
1. Refer to Tables 1, 2, and 3 to this section for maximum ground anchor spacing.

2. Longitudinal anchors not shown for clarity; refer to 3285.402(b)(2) for longitudinal anchoring requirements.

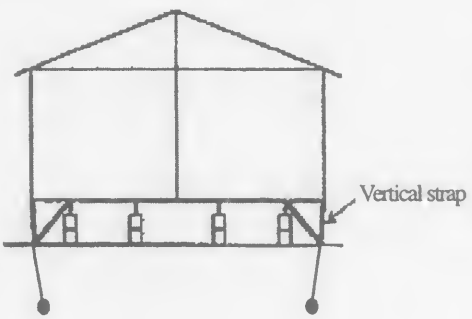
Figure B to § 3285.402 Anchor Strap and Pier Relationship.



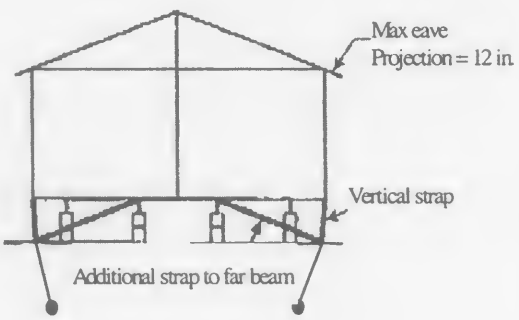
Near Beam Method



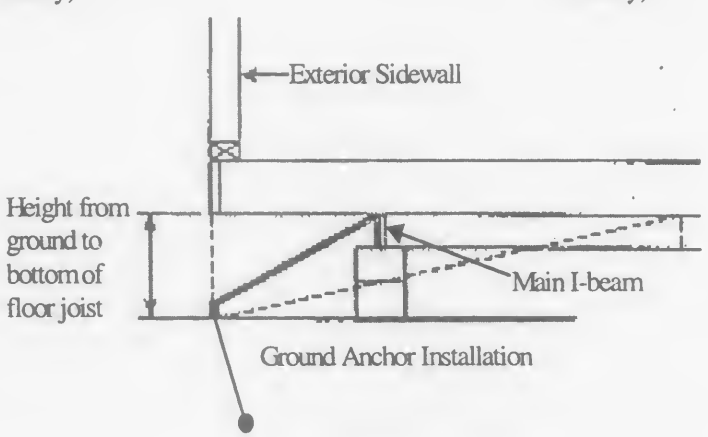
Second Beam Method
(Vertical tie down straps required)



Near Beam Method
(Mate-line piers and anchors omitted for clarity)



Second Beam Method
(Mate-line piers and anchors omitted for clarity)

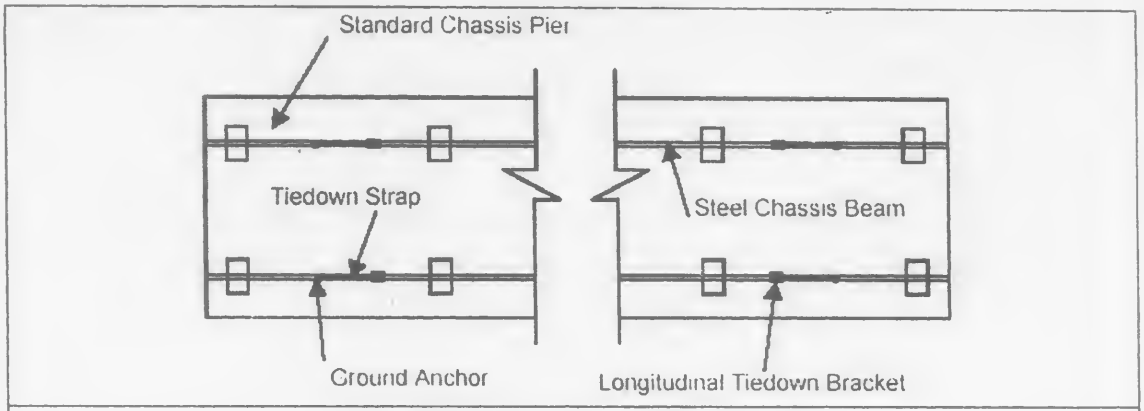


Notes:

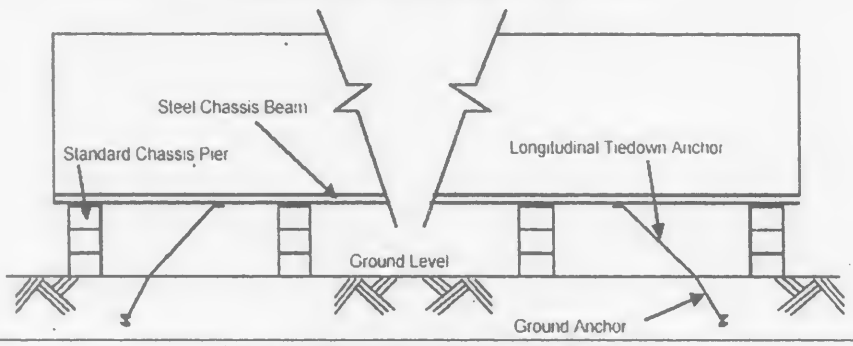
1. Vertical Straps are not required in Wind Zone I.

2. The frame must be designed to prevent rotation of the main chassis beam, when the diagonal ties are not attached to the top flange of the beam. See § 3285.401(d)(3).

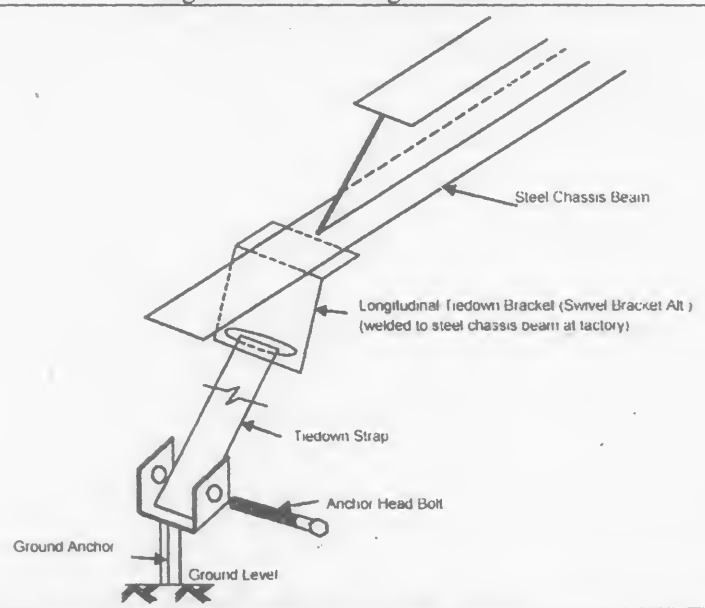
Figure C to § 3285.402 Longitudinal Anchoring



Longitudinal Anchorage – Plan View



Longitudinal Anchorage – Side View



Typical Longitudinal Anchorage Bracket and Ground Anchor Attachment

TABLE 1 TO § 3285.402.—MAXIMUM DIAGONAL TIE-DOWN STRAP SPACING, WIND ZONE I

Nominal floor width, single section/multi-section	Max. height from ground to diagonal strap attachment	I-beam spacing 82.5 in.	I-beam spacing 99.5 in.
12/24 ft. 144 in. nominal section(s)	25 in	14 ft. 2 in	N/A.
	33 in	11 ft. 9 in	N/A.
	46 in	9 ft. 1 in	N/A.
	67 in	N/A	N/A.
14/28 ft. 168 in. nominal section(s)	25 in	18 ft. 2 in	15 ft. 11 in.
	33 in	16 ft. 1 in	13 ft. 6 in.
	46 in	13 ft. 3 in	10 ft. 8 in.
	67 in	10 ft. 0 in	N/A.
16/32 ft. 180 in. to 192 in. nominal section(s)	25 in	N/A	19 ft. 5 in.
	33 in	19 ft. 0 in	17 ft. 5 in.
	46 in	16 ft. 5 in	14 ft. 7 in.
	67 in	13 ft. 1 in	11 ft. 3 in.

Notes:

1. Table is based on maximum 90 in. sidewall height.
2. Table is based on maximum 4 in. inset for ground anchor head from edge of floor or wall.
3. Table is based on main rail (I-beam) spacing per given column.
4. Table is based on maximum 4 in. eave width for single-section homes and maximum 12 in. for multi-section homes.
5. Table is based on maximum 20-degree roof pitch (4.3/12).
6. Table is based upon the minimum height between the ground and the bottom of the floor joist being 18 inches. Interpolation may be required for other heights from ground to strap attachment.
7. Additional tie-downs may be required per the home manufacturer instructions.
8. Ground anchors must be certified for these conditions by a professional engineer, architect, or listed by a nationally recognized testing laboratory.
9. Ground anchors must be installed to their full depth, and stabilizer plates, if required by the ground anchor listing or certification, must also be installed in accordance with the listing or certification and in accordance with the ground anchor and home manufacturer instructions.
10. Strapping and anchoring equipment must be certified by a registered professional engineer or registered architect, or listed by a nationally recognized testing agency to resist these specified forces, in accordance with testing procedures in ASTM D 3953–97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3285.4).
11. A reduced ground anchor or strap working load capacity will require reduced tie-down strap and anchor spacing.
12. Ground anchors must not be spaced closer than the minimum spacing permitted by the listing or certification.
13. Table is based on a 3,150 lbs. working load capacity, and straps must be placed within 2 ft. of the ends of the home.
14. Table is based on a minimum angle of 30 degrees and a maximum angle of 60 degrees between the diagonal strap and the ground.
15. Table does not consider flood or seismic loads and is not intended for use in flood or seismic hazard areas. In those areas, the anchorage system is to be designed by a professional engineer or architect.

TABLE 2 TO § 3285.402—MAXIMUM DIAGONAL TIE-DOWN STRAP SPACING, WIND ZONE II.

Nominal floor width, single section/multi-section	Max. height from ground to diagonal strap attachment	Near beam method I–beam spacing		Second beam method I–beam spacing	
		82.5 in.	99.5 in.	82.5 in.	99.5 in.
12 ft/24 ft. 144 in. nominal section(s).	25 in	6 ft. 2 in	4 ft. 3 in	N/A	N/A
	33 in	5 ft. 2 in	N/A	N/A	N/A
	46 in	4 ft. 0 in	N/A	N/A	N/A
	67 in	N/A	N/A	6 ft 1 in	6 ft 3 in
14 ft/28 ft. 168 in. nominal section(s).	25 in	7 ft. 7 in	6 ft. 9 in	N/A	N/A
	33 in	6 ft. 10 in	5 ft. 9 in	N/A	N/A
	46 in	5 ft. 7 in	4 ft. 6 in	N/A	N/A
	67 in	4 ft. 3 in	N/A	N/A	N/A
16 ft/32 ft. 180 in. to 192 in. nominal section(s).	25 in	N/A	7 ft. 10 in	N/A	N/A
	33 in	7 ft. 6 in	7 ft. 2 in	N/A	N/A
	46 in	6 ft. 9 in	6 ft. 0 in	N/A	N/A
	67 in	5 ft. 4 in	4 ft. 7 in	N/A	N/A

Notes:

1. Table is based on maximum 90 in. sidewall height.
2. Table is based on maximum 4 in. inset for ground anchor head from edge of floor or wall.
3. Tables are based on main rail (I-beam) spacing per given column.
4. Table is based on maximum 4 in. eave width for single-section homes and maximum 12 in. for multi-section homes.
5. Table is based on maximum 20-degree roof pitch (4.3/12).
6. All manufactured homes designed to be located in Wind Zone II must have a vertical tie installed at each diagonal tie location.
7. Table is based upon the minimum height between the ground and the bottom of the floor joist being 18 inches. Interpolation may

be required for other heights from ground to strap attachment.

8. Additional tie downs may be required per the home manufacturer instructions.

9. Ground anchors must be certified by a professional engineer, or registered architect, or listed by a nationally recognized testing laboratory.

10. Ground anchors must be installed to their full depth, and stabilizer plates, if required by the ground anchor listing or certification, must also be installed in accordance with the listing or certification and in accordance with the ground anchor and home manufacturer instructions.

11. Strapping and anchoring equipment must be certified by a registered professional engineer or registered architect or must be listed by a nationally recognized testing agency to resist these specified forces, in accordance with testing procedures in ASTM D 3953—97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3285.4).

12. A reduced ground anchor or strap working load capacity will require reduced tie-down strap and anchor spacing.

13. Ground anchors must not be spaced closer than the minimum spacing permitted by the listing or certification.

14. Table is based on a 3,150 lbs. working load capacity, and straps must be placed within 2 ft. of the ends of the home.

15. Table is based on a minimum angle of 30 degrees and a maximum of 60 degrees between the diagonal strap and the ground.

16. Table does not consider flood or seismic loads and is not intended for use in flood or seismic hazard areas. In those areas, the anchorage system is to be designed by a professional engineer or architect.

TABLE 3 TO § 3285.402.—MAXIMUM DIAGONAL TIE-DOWN STRAP SPACING, WIND ZONE III.

Nominal floor width, single section/multi-section	Max. height from ground to diagonal strap attachment	Near beam method I-beam spacing		Second beam method I-beam spacing	
		82.5 in.	99.5 in.	82.5 in.	99.5 in.
12 ft./24 ft. 144 in. nominal section(s).	25 in	5 ft. 1 in	N/A	N/A	N/A
	33 in	4 ft. 3 in	N/A	N/A	N/A
	46 in	N/A	N/A	N/A	N/A
	67 in	N/A	N/A	N/A	N/A
14 ft./28 ft. 168 in. nominal section(s).	25 in	6 ft. 2 in.	5 ft. 7 in	N/A	N/A
	33 in	5 ft. 8 in	4 ft. 9 in	N/A	N/A
	46 in	4 ft. 8 in	N/A	N/A	N/A
	67 in	N/A	N/A	N/A	N/A
16 ft. 32 ft. 180 in. to 192 in. nominal sections.	25 in	N/A	6 ft. 3 in	N/A	N/A
	33 in	6 ft. 1 in	5 ft. 11 in	N/A	N/A
	46 in	5 ft. 7 in	5 ft. 0 in	N/A	N/A
	67 in	4 ft. 5 in	N/A	N/A	N/A

Notes: 1. Table is based on maximum 90 in. sidewall height.

2. Table is based on maximum 4 in. inset for ground anchor head from edge of floor or wall.

3. Table is based on main rail (I-beam) spacing per given column.

4. Table is based on maximum 4 in. eave width for single-section homes and maximum 12 in. for multi-section homes.

5. Table is based on maximum 20-degree roof pitch (4.3/12).

6. All manufactured homes designed to be located in Wind Zone III must have a vertical tie installed at each diagonal tie location.

7. Table is based upon the minimum height between the ground and the bottom of the floor joist being 18 inches. Interpolation may be required for other heights from ground to strap attachment.

8. Additional tie downs may be required per the home manufacturer instructions.

9. Ground anchors must be certified by a professional engineer, or registered architect, or listed by a nationally recognized testing laboratory.

10. Ground anchors must be installed to their full depth, and stabilizer plates, if required by the ground anchor listing or certification, must also be installed in accordance with the listing or certification and per the ground anchor and home manufacturer instructions.

11. Strapping and anchoring equipment must be certified by a registered professional engineer or registered architect or must be listed by a nationally recognized testing agency to resist these specified forces, in accordance with testing procedures in ASTM D 3953–97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3285.4).

12. A reduced ground anchor or strap working load capacity will require reduced tie-down strap and anchor spacing.

13. Ground anchors must not be spaced closer than the minimum spacing permitted by the listing or certification.

14. Table is based on a 3,150 lbs. working load capacity, and straps must be placed within 2 ft. of the ends of the home.

15. Table is based on a minimum angle of 30 degrees and a maximum angle of 60 degrees between the diagonal strap and the ground.

16. Table does not consider flood or seismic loads and is not intended for use in flood or seismic hazard areas. In those areas, the anchorage system is to be designed by a professional engineer or architect.

§ 3285.403 Sidewall, over-the-roof, mate-line, and shear wall straps.

If sidewall, over-the-roof, mate-line, or shear wall straps are installed on the home, they must be connected to an anchoring assembly.

§ 3285.404 Severe climatic conditions.

In frost-susceptible soil locations, ground anchor augers must be installed below the frost line, unless the foundation system is frost-protected to prevent the effects of frost heave, in accordance with acceptable engineering practice and § 3280.306 of this chapter and § 3285.312.

§ 3285.405 Severe wind zones.

When any part of a home is installed within 1,500 feet of a coastline in Wind Zones II or III, the manufactured home must be designed for the increased requirements, as specified on the home's data plate (refer to § 3280.5(f) of this chapter) in accordance with acceptable engineering practice. Where site or other conditions prohibit the use of the manufacturer's instructions, a registered professional engineer or registered architect, in accordance with acceptable engineering practice, must design anchorage for the special wind conditions.

§ 3285.406 Flood hazard areas.

Refer to § 3285.302 for anchoring requirements in flood hazard areas.

Subpart F—Optional Features

§ 3285.501 Home installation manual supplements.

Supplemental instructions for optional equipment or features must be approved by the DAPIA as not taking the home out of conformance with the requirements of this part, or part 3280 of this chapter, and included with the manufacturer installation instructions.

§ 3285.502 Expanding rooms.

The support and anchoring systems for expanding rooms must be installed in accordance with designs provided by the home manufacturer or prepared by a registered professional engineer or registered architect, in accordance with acceptable engineering practice.

§ 3285.503 Optional appliances.

(a) *Comfort cooling systems.* When not provided and installed by the home manufacturer, any comfort cooling systems that are installed must be installed according to the appliance manufacturer's installation instructions.

(1) *Air conditioners.* Air conditioning equipment must be listed or certified by a nationally recognized testing agency for the application for which the unit is intended and installed in accordance with the terms of its listing or certification (see § 3280.714 of this chapter).

(i) *Energy efficiency.*

(A) Site-installed central air conditioning equipment must be sized to meet the home's heat gain requirement, in accordance with Chapter 28 of the 1997 ASHRAE Handbook of Fundamentals (incorporated by reference, see § 3285.4) or ACCA Manual J, Residential Cooling Load, 8th Edition (incorporated by reference, see § 3285.4). Information necessary to calculate the home's heat gain can be found on the home's comfort cooling certificate.

(B) The BTU/hr. rated capacity of the site-installed air conditioning equipment must not exceed the air distribution system's rated BTU/hr. capacity as shown on the home's compliance certificate.

(ii) *Circuit rating.* If a manufactured home is factory-provided with an exterior outlet to energize heating and/or air conditioning equipment, the branch circuit rating on the tag adjacent to this outlet must be equal to or greater than the minimum circuit amperage identified on the equipment rating plate.

(iii) *A-coil units.*

(A) A-coil air conditioning units must be compatible and listed for use with the furnace in the home and installed in accordance with the appliance manufacturer's instructions.

(B) The air conditioner manufacturer instructions must be followed.

(C) All condensation must be directed beyond the perimeter of the home by means specified by the equipment manufacturer.

(2) *Heat pumps.* Heat pumps must be listed or certified by a nationally recognized testing agency for the application for which the unit is intended and installed in accordance with the terms of its listing or certification. (See § 3280.714 of this chapter).

(3) *Evaporative coolers.*

(i) A roof-mounted cooler must be listed or certified by a nationally recognized testing agency for the application for which the unit is intended and installed in accordance with the terms of its listing (see § 3280.714 of this chapter).

(A) Any discharge grill must not be closer than three feet from a smoke alarm.

(B) Before installing a roof-mounted evaporative cooler on-site, the installer must ensure that the roof will support the weight of the cooler.

(C) A rigid base must be provided to distribute the cooler weight over multiple roof trusses to adequately support the weight of the evaporative cooler.

(ii) An evaporative cooler that is not roof-mounted is to be installed in accordance with the requirements of its listing or the equipment manufacturer's instructions, whichever is the more restrictive.

(b) *Fireplaces and wood-stoves.* When not provided by the home manufacturer, fireplaces and wood-stoves including chimneys and air inlets for fireplaces and wood stoves must be listed for use with manufactured homes and must be installed in accordance with their listings.

(c) *Appliance venting.*

(1) All fuel burning heat producing appliances of the vented type except ranges and ovens must be vented to the exterior of the home.

(2) Upon completion, the venting system must comply with all requirements of §§ 3280.707(b) and 3280.710 of the Manufactured Home Construction and Safety Standards in this chapter.

(3) When the vent exhausts through the floor, the vent must not terminate under the home and must extend to the home's exterior and through any skirting that may be installed.

(d) *Clothes dryer exhaust duct system.* A clothes dryer exhaust duct system must conform with and be completed in accordance with the appliance manufacturer instructions and § 3280.708 of this chapter. The vents must exhaust to the exterior of the home, beyond any perimeter skirting installed around it, as shown in Figure to § 3285.503.

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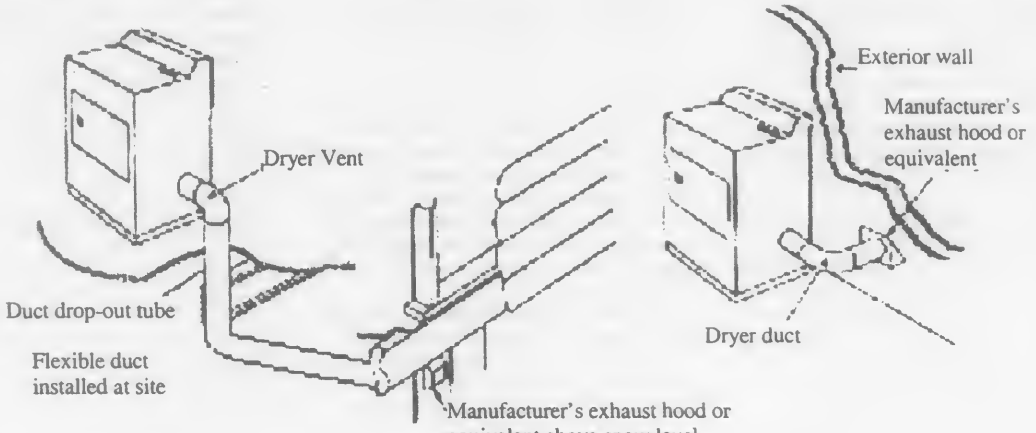
Figure A to § 3285.503 Dryer Exhaust System.



Notes:

1. Installation of the exhaust system must be in accordance with the dryer manufacturer instructions.
2. Dryer exhaust system must not contain reverse slope or terminate under the home.

§ 3285.504 Skirting.

(a) Skirting, if used, must be of weather-resistant materials or provided with protection against weather deterioration at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 oz./ft.^{2} of surface coated.

(b) Skirting must not be attached in a manner that can cause water to be trapped between the siding and trim or forced up into the wall cavities trim to which it is attached.

(c) All wood skirting within 6 inches of the ground must be pressure-treated in accordance with AWPA Standard U1 (incorporated by reference, see § 3285.4) for Use Category 4A, Ground Anchor Contact Applications, or be naturally resistant to decay and termite infestations.

(d) Skirting must not be attached in a manner that impedes the contraction and expansion characteristics of the home's exterior covering.

§ 3285.505 Crawlspace ventilation.

(a) A crawlspace with skirting must be provided with ventilation openings. The minimum net area of ventilation openings must not be less than one square foot (ft.^{2}) for every 150 square feet (ft.^{2}) of the home's floor area. The total area of ventilation openings may be reduced to one square foot (ft.^{2}) for every 1,500 square feet (ft.^{2}) of the home's floor area, where a uniform 6–mil polyethylene sheet material or other acceptable vapor retarder is installed, according to § 3285.204, on the ground surface beneath the entire floor area of the home.

(b) Ventilation openings must be placed as high as practicable above the ground.

(c) Ventilation openings must be located on at least two opposite sides to provide cross-ventilation.

(d) Ventilation openings must be covered for their full height and width with a perforated corrosion and weather-resistant covering that is designed to prevent the entry of rodents. In areas subject to freezing, the coverings for the ventilation openings must also be of the adjustable type, permitting them to be in the open or closed position, depending on the climatic conditions.

(e) Access opening(s) not less than 18 inches in width and 24 inches in height and not less than three square feet (ft.^{2}) in area must be provided and must be located so that any utility connections located under the home are accessible.

(f) Dryer vents and combustion air inlets must pass through the skirting to the outside. Any surface water runoff from the furnace, air conditioning, or water heater drains must be directed away from under the home or collected by other methods identified in § 3285.203.

Subpart G—Ductwork and Plumbing and Fuel Supply Systems

§ 3285.601 Field assembly.

Home manufacturers must provide specific installation instructions for the proper field assembly of manufacturer-supplied and shipped loose ducts, plumbing, and fuel supply system parts that are necessary to join all sections of the home and are designed to be located underneath the home. The installation instructions must be designed in accordance with applicable requirements of part 3280, subparts G and H, of this chapter, as specified in this subpart.

§ 3285.602 Utility connections.

Refer to § 3285.904 for considerations for utility system connections.

§ 3285.603 Water supply.

(a) *Crossover.* Multi-section homes with plumbing in both sections require water-line crossover connections to join all sections of the home. The crossover design requirements are located in, and must be designed in accordance with, § 3280.609 of this chapter.

(b) *Maximum supply pressure and reduction.* When the local water supply pressure exceeds 80 psi to the manufactured home, a pressure-reducing valve must be installed.

(c) *Mandatory shutoff valve.*

(1) An identified and accessible shutoff valve must be installed between the water supply and the inlet.

(2) The water riser for the shutoff valve connection must be located underneath or adjacent to the home.

(3) The shutoff valve must be a full-flow gate or ball valve, or equivalent valve.

(d) *Freezing protection.* Water line crossovers completed during installation must be protected from freezing. The freeze protection design requirements are located in, and must

be designed in accordance with, § 3280.603 of this chapter.

(1) If subject to freezing temperatures, the water connection must be wrapped with insulation or otherwise protected to prevent freezing.

(2) In areas subject to freezing or subfreezing temperatures, exposed sections of water supply piping, shutoff valves, pressure reducers, and pipes in water heater compartments must be insulated or otherwise protected from freezing.

(3) *Use of pipe heating cable.* Only pipe heating cable listed for manufactured home use is permitted to be used, and it must be installed in accordance with the cable manufacturer installation instructions.

(e) *Testing procedures.*

(1) The water system must be inspected and tested for leaks after completion at the site. The installation instructions must provide testing requirements that are consistent with § 3280.612 of this chapter.

(2) The water heater must be disconnected when using an air-only test.

§ 3285.604 Drainage system.

(a) *Crossovers.* Multi-section homes with plumbing in more than one section require drainage system crossover connections to join all sections of the home. The crossover design requirements are located in, and must be designed in accordance with, § 3280.610 of this chapter.

(b) *Assembly and support.* If portions of the drainage system were shipped loose because they were necessary to join all sections of the home and designed to be located underneath the home, they must be installed and supported in accordance with § 3280.608 of this chapter.

(c) *Proper slopes.* Drains must be completed in accordance with § 3280.610 of this chapter.

(1) Drain lines must not slope less than one-quarter inch per foot, unless otherwise noted on the schematic diagram, as shown in Figure to § 3285.604.

(2) A slope of one-eight inch per foot may be permitted when a clean-out is installed at the upper end of the run.

(d) *Testing procedures.* The drainage system must be inspected and tested for leaks after completion at the site. The installation instructions must provide testing requirements that are consistent with § 3280.612 of this chapter.

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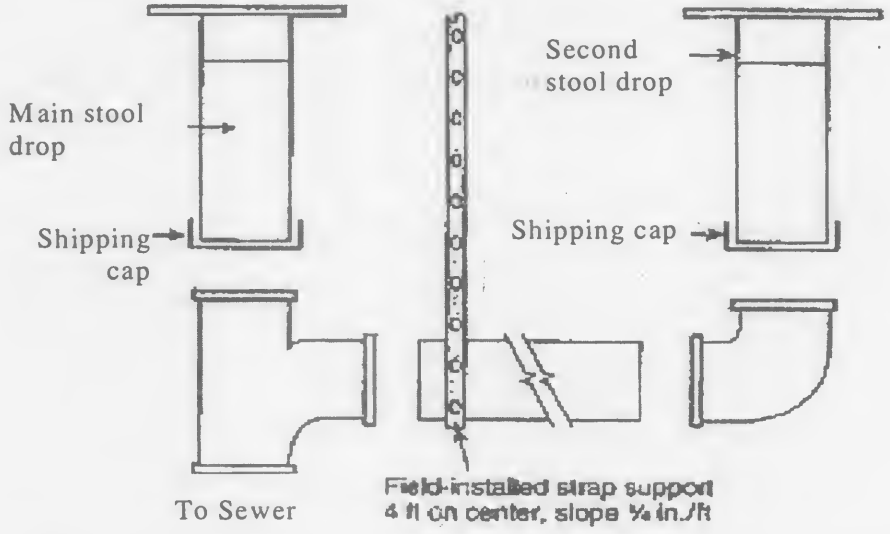
Figure A to § 3285.604 Drain Pipe Slope and Connections.



§ 3285.605 Fuel supply system.

(a) *Proper supply pressure.* The gas piping system in the home is designed for a pressure that is at least 7 inches of water column [4oz./in.^{2} or 0.25 psi] and not more than 14 inches of water column [8 oz./in.^{2} or 0.5 psi]. If gas from any supply source exceeds, or could exceed this pressure, a regulator must be installed if required by the LAHJ.

(b) *Crossovers.*

(1) Multi-section homes with fuel supply piping in both sections require crossover connections to join all sections of the home. The crossover design requirements are located in, and must be designed in accordance with, § 3280.705 of this chapter.

(2) Tools must not be required to connect or remove the flexible connector quick-disconnect.

(c) *Testing procedures.* The gas system must be inspected and tested for leaks after completion at the site. The installation instructions must provide testing requirements that are consistent with § 3280.705 of this chapter.

§ 3285.606 Ductwork connections.

(a) Multi-section homes with ductwork in more than one section require crossover connections to complete the duct system of the home. All ductwork connections, including duct collars, must be sealed to prevent air leakage. Galvanized metal straps or tape and mastics listed to UL 181A (incorporated by reference, see § 3285.4), for closure systems with rigid air ducts and connectors, or UL 181B (incorporated by reference, see § 3285.4), for closure systems with flexible air ducts and connectors, must be used around the duct collar and secured tightly to make all connections.

(b) If metal straps are used, they must be secured with galvanized sheet metal screws.

(c) Metal ducts must be fastened to the collar with a minimum of three

galvanized sheet metal screws equally spaced around the collar.

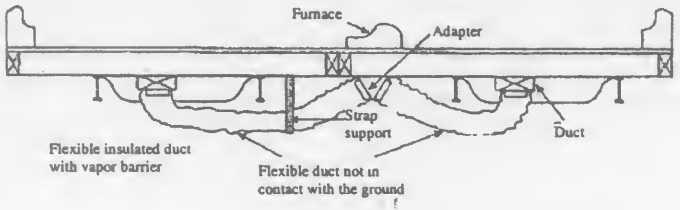
(d) Air conditioning or heating ducts must be installed in accordance with applicable requirements of the duct manufacturer installation instructions.

(e) The duct must be suspended or supported above the ground by straps or other means that are spaced at a maximum distance not to exceed 4'–0" or as otherwise permitted by the installation instructions. When straps are used to support a flexible type duct, the straps must be at least ½" wider than the spacing of the metal spirals encasing the duct. The ducts must be installed such that the straps cannot slip between any two spirals and arranged under the floor to prevent compression or kinking in any location, as shown in Figures A and B to this section. In-floor crossover ducts are permitted, in accordance with § 3285.606(g).

(f) Crossover ducts outside the thermal envelope must be insulated with materials that conform to designs consistent with part 3280, subpart F of this chapter.

(g) In-floor or ceiling crossover duct connections must be installed and sealed to prevent air leakage.

Figure A to §3285.606 – Crossover Duct Installation with Two Connecting Ducts.

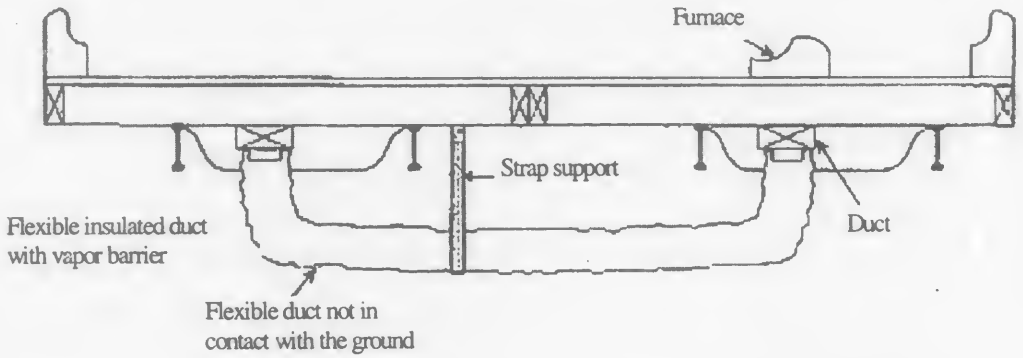


Notes:

1. This system is typically used when a crossover duct has not been built into the floor and the furnace is outside the I–Beam. With this type of installation, it is necessary for two flexible ducts to be installed.

2. The crossover duct must be listed for exterior use.

Figure B to §3285.606 Crossover Duct Installation with One Connecting Duct.



Notes:

1. This system is typically used when a crossover duct has not been built into the floor and the furnace is situated directly over the main duct in one section of the home. A single flexible duct is then used to connect the two sections to each other.

2. The crossover duct must be listed for exterior use.

Subpart H—Electrical Systems and Equipment

§3285.701 Electrical crossovers.

Multi-section homes with electrical wiring in more than one section require crossover connections to join all sections of the home. The crossover must be designed in accordance with part 3280, subpart I of this chapter, and completed in accordance with the directions provided in the installation instructions.

§3285.702 Miscellaneous lights and fixtures.

(a) When the home is installed, exterior lighting fixtures, ceiling-suspended (paddle) fans, and chain-hung lighting fixtures are permitted to be installed in accordance with their listings and part 3280, subpart I of this chapter.

(b) *Grounding.* (1) All the exterior lighting fixtures and ceiling fans installed per § 3285.702(a) must be grounded by a fixture-grounding device or by a fixture-grounding wire.

(2) For chain-hung lighting fixtures, as shown in Figure A to this section, both

a fixture-grounding device and a fixture-grounding wire must be used. The identified conductor must be the neutral conductor.

(c) Where lighting fixtures are mounted on combustible surfaces such as hardboard, a limited combustible or noncombustible ring, as shown in Figures A and B to this section, must be installed to completely cover the combustible surface exposed between the fixture canopy and the wiring outlet box.

(d) *Exterior lights.* (1) The junction box covers must be removed and wire-to-wire connections must be made using listed wire connectors.

(2) Wires must be connected black-to-black, white-to-white, and equipment ground-to-equipment ground.

(3) The wires must be pushed into the box, and the lighting fixture must be secured to the junction box.

(4) The lighting fixture must be caulked around its base to ensure a watertight seal to the sidewall.

(5) The light bulb must be installed and the globe must be attached.

(e) *Ceiling fans.* (1) Ceiling-suspended (paddle) fans must be connected to junction box listed and marked for ceiling fan application, in accordance with Article 314.27(b) of the National Electrical Code, NFPA No. 70–2005 (incorporated by reference, see § 3285.4); and

(2) The ceiling fan must be installed with the trailing edges of the blades at least 6 feet 4 inches above the finished floor; and

(3) The wiring must be connected in accordance with the product manufacturer installation instructions.

(f) *Testing.* (1) After completion of all electrical wiring and connections, including crossovers, electrical lights, and ceiling fans, the electrical system must be inspected and tested at the site, in accordance with the testing requirements of § 3280.810(b) of this chapter.

(2) The installation instructions must indicate that each manufactured home must be subjected to the following tests:

(i) An electrical continuity test to ensure that metallic parts are effectively bonded;

(ii) Operational tests of all devices and utilization equipment, except water heaters, electric ranges, electric furnaces, dishwashers, clothes washers/dryers, and portable appliances, to demonstrate that they are connected and in working order; and

(iii) For electrical equipment installed or completed during installation, electrical polarity checks must be completed to determine that connections have been made properly. Visual verification is an acceptable electrical polarity check.

Figure A to § 3285.702 Typical Installation of Chain-Hung Lighting Fixture.

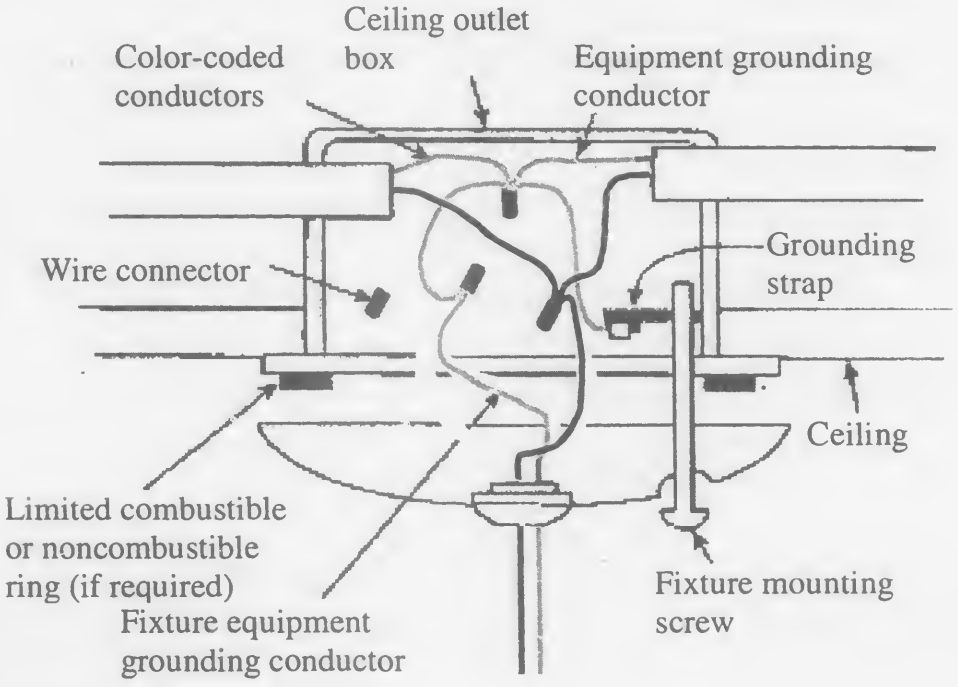
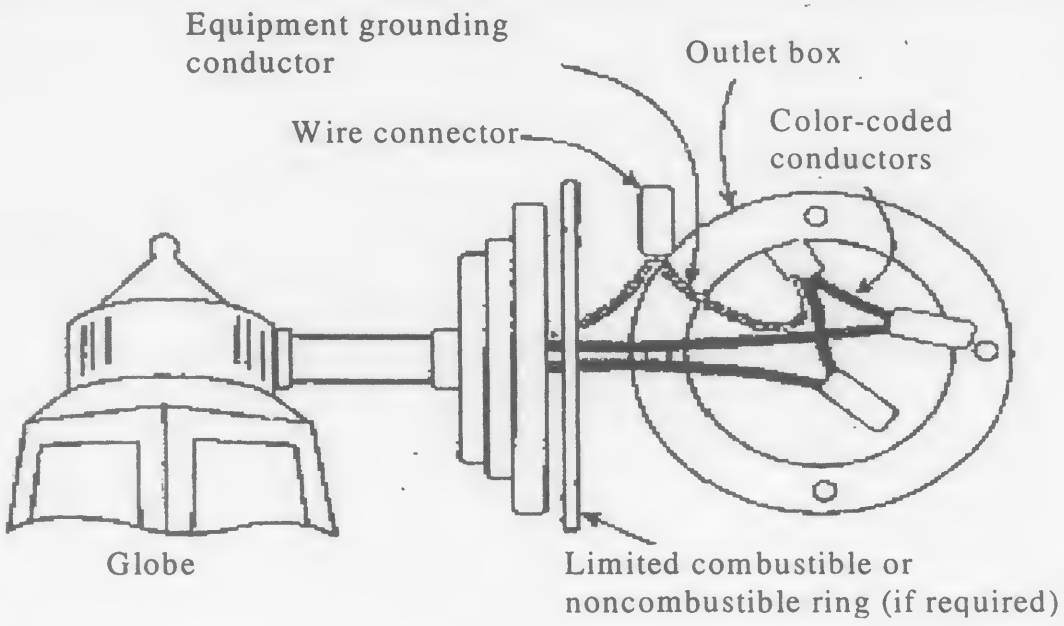


Figure B to § 3285.702 Typical Installation of Surface-Mounted Exterior Lighting Fixture.



§ 3285.703 Smoke alarms.

Smoke alarms must be functionally tested in accordance with applicable requirements of the smoke alarm manufacturer instructions and must be consistent with § 3280.208 of this chapter.

§ 3285.704 Telephone and cable TV.

Refer to § 3285.906 for considerations pertinent to installation of telephone and cable TV.

Subpart I—Exterior and Interior Close-Up

§ 3285.801 Exterior close-up.

(a) Exterior siding and roofing necessary to join all sections of the home must be installed according to the product manufacturer installation instructions and must be fastened in accordance with designs and manufacturer instructions, consistent with §§ 3280.305 and 3280.307 of this chapter. Exterior close-up strips/trim must be fastened securely and sealed with exterior sealant (see figure A to this section).

(b) *Joints and seams.* All joints and seams in exterior wall coverings that were disturbed during location of the home must be made weatherproof.

(c) Prior to installing the siding, the polyethylene sheeting covering exterior walls for transit must be completely removed.

(d) Prior to completing the exterior close-up, any holes in the roofing must be made weatherproof and sealed with a sealant or other material that is suitable for use with the roofing in which the hole is made.

(e) *Mate-line gasket.* The home manufacturer must provide materials and designs for mate-line gaskets or other methods designed to resist the entry of air, water, water vapor, insects, and rodents at all mate-line locations exposed to the exterior (see Figure B to this section).

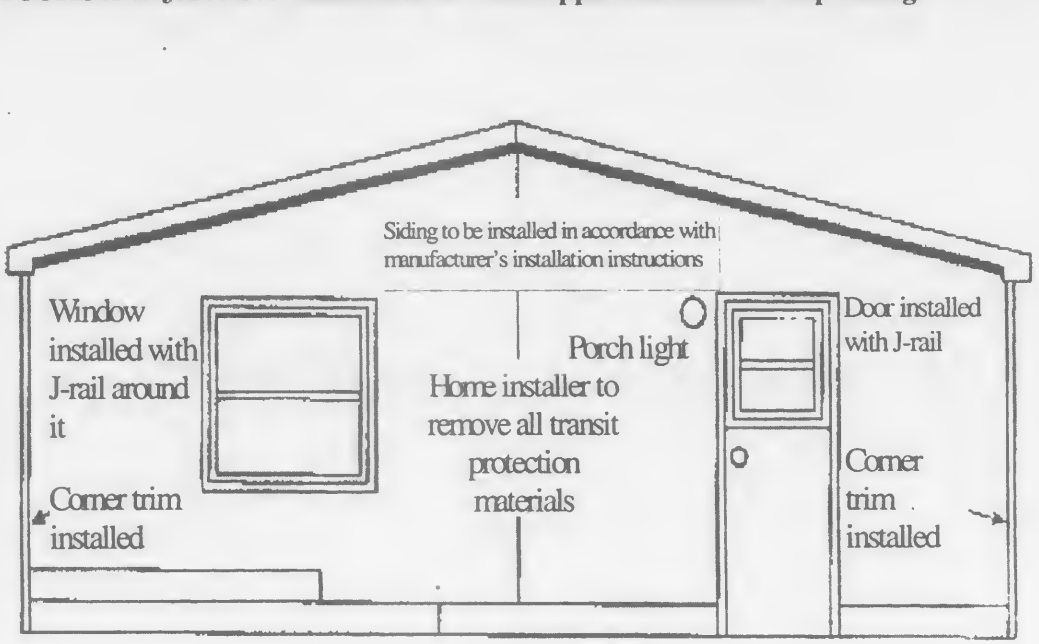
(f) *Hinged roofs and eaves.* Hinged roofs and eaves must be completed during installation in compliance with all requirements of the Manufactured Home Construction and Safety Standards (24 CFR part 3280) and the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282). Unless exempted by the following provisions, hinged roofs are also subject to a final inspection for compliance with the Manufactured Home Construction and Safety Standards (24 CFR part 3280) by the IPIA or a qualified independent inspector acceptable to the IPIA. Homes with hinged roofs that are exempted from IPIA inspection are instead to be completed and inspected in accordance with the Manufactured Home Installation Program (24 CFR part 3286). This includes homes:

(1) That are designed to be located in Wind Zone I;

(2) In which the pitch of the hinged roof is less than 7:12; and

(3) In which fuel burning appliance flue penetrations are not above the hinge.

FIGURE A to §3285.801 Installation of Field-Applied Horizontal Lap Siding



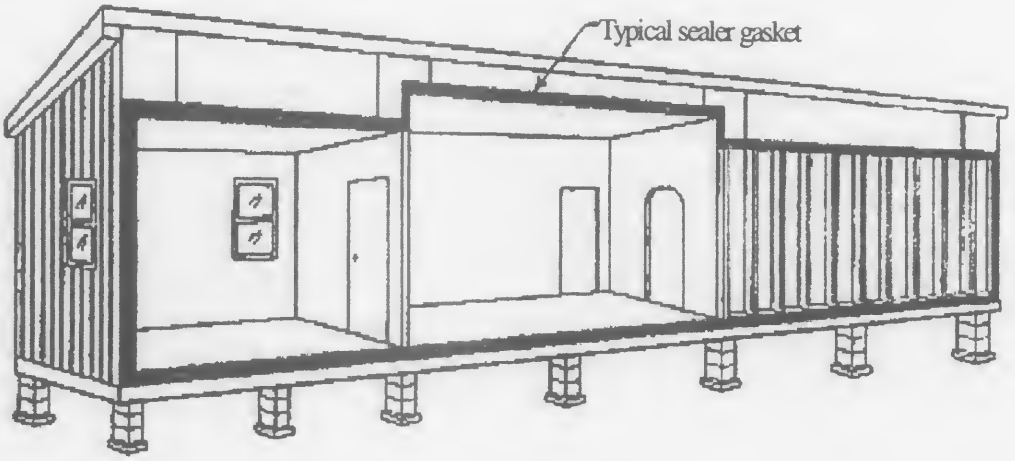
Notes:

1. Multi-section homes with horizontal-lap siding can be shipped with no siding on the front and rear end walls.

2. The manufacturer must install doors/windows trimmed with J-rail or the equivalent and protect all exposed materials not designed for exposure to the weather with plastic sheeting for transport. Siding, starter trim, and vents may be shipped loose in the home for installation on set-up.

3. All home installers must ensure that all field installed trim, windows, doors, and other openings are properly sealed according to the siding manufacturer installation instructions.

Figure B to § 3285.801 Mate-Line Gasket.



Note: On multi-section manufactured homes, install the sealer gasket on the ceiling, end walls, and floor mate-line prior to joining the sections together.

§ 3285.802 Structural interconnection of multi-section homes.

(a) For multi-section homes, structural interconnections along the interior and exterior at the mate-line are necessary to join all sections of the home.

(b) Structural interconnection must be designed in accordance with the requirements located in § 3280.305 of this chapter to ensure a completely integrated structure.

(c) Upon completion of the exterior close-up, no gaps are permitted between the structural elements being interconnected along the mate-line of multi-section homes. However, prior to completion of the exterior close-up, gaps that do not exceed one inch are permitted between structural elements provided:

(1) The gaps are closed before completion of close-up;

(2) The home sections are in contact with each other; and

(3) The mating gasket is providing a proper seal. All such gaps must be shimmed with dimensional lumber, and fastener lengths used to make connections between the structural elements must be increased to provide adequate penetration into the receiving member.

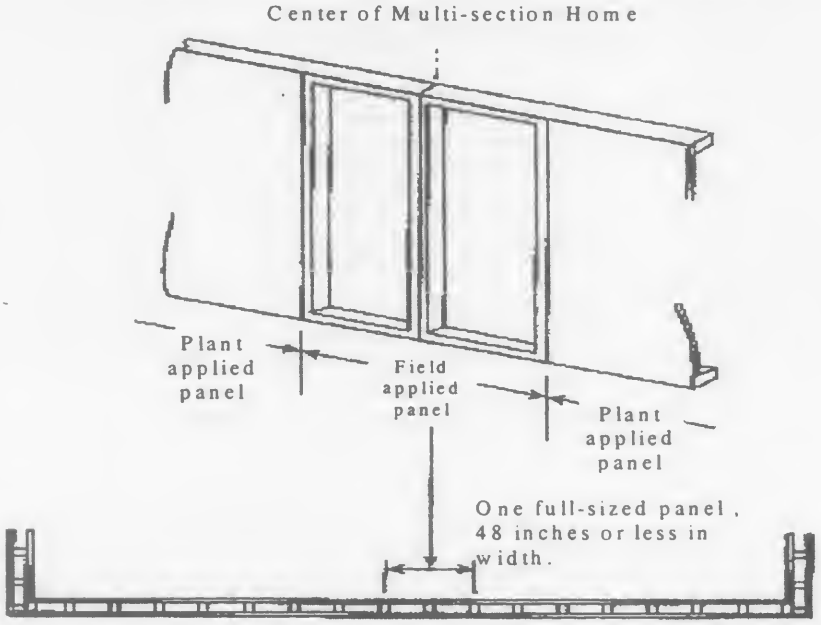
§ 3285.803 Interior close-up.

(a) All shipping blocking, strapping, or bracing must be removed from appliances, windows, and doors.

(b) Interior close up items necessary to join all sections of the home or items subject to transportation damage may be packaged or shipped with the home for site installation.

(c) Shipped-loose wall paneling necessary for the joining of all sections of the home must be installed by using polyvinyl acetate (PVA) adhesive on all framing members and fastened with minimum 1½ inch long staples or nails at 6 inches on center panel edges and 12 inches on center in the field, unless alternative fastening methods are permitted in the installation instructions (see Figure A to § 3285.803).

FIGURE A to §3285.803 - Installation of Interior Field-Applied Panels.



Note: Specific designs must be approved by a DAPIA and included in the home manufacturer installation instructions.

§ 3285.804 Bottom board repair.

(a) The bottom board covering must be inspected for any loosening or areas that might have been damaged or torn during installation or transportation. Any missing insulation is to be replaced prior to closure and repair of the bottom board.

(b) Any splits or tears in the bottom board must be resealed with tape or patches in accordance with methods provided in the manufacturers installation instructions.

(c) Plumbing P-traps must be checked to be sure they are well-insulated and covered.

(d) All edges of repaired areas must be taped or otherwise sealed.

Subpart J—Optional Information for Manufacturer's Installation Instructions

§ 3285.901 General.

The planning and permitting processes, as well as utility connection, access, and other requirements, are outside of HUD's authority and may be governed by LAHJs. These Model Installation Standards do not attempt to comprehensively address such requirements. However, HUD recommends that the manufacturer's installation instructions include the information and advisories in this Subpart J, in order to protect the manufactured home, as constructed in accordance with the MHCSS.

§ 3285.902 Moving manufactured home to location.

It is recommended that the installation instructions indicate that the LAHJ be informed before moving the manufactured home to the site. It is also recommended that the installation instructions indicate that the manufactured home is not to be moved to the site until the site is prepared in accordance with subpart C of this part and when the utilities are available as required by the LAHJ. Examples of related areas that might be addressed in the installation instructions for meeting this recommendation include:

(a) *Access for the transporter.* Before attempting to move a home, ensure that

the transportation equipment and home can be routed to the installation site and that all special transportation permits required by the LAHJ have been obtained.

(b) *Drainage structures.* Ditches and culverts used to drain surface runoff meet the requirements of the LAHJ and are considered in the overall site preparation.

§ 3285.903 Permits, alterations, and on-site structures.

It is recommended that the installation instructions include the following information related to permits, alterations, and on-site structures:

(a) *Issuance of permits.* All necessary LAHJ fees should be paid and permits should be obtained, which may include verification that LAHJ requirements regarding encroachments in streets, yards, and courts are obeyed and that permissible setback and fire separation distances from property lines and public roads are met.

(b) *Alterations.* Prior to making any alteration to a home or its installation, contact the LAHJ to determine if plan approval and permits are required.

(c) *Installation of on-site structures.* Each accessory building and structure is designed to support all of its own live and dead loads, unless the structure, including any attached garage, carport, deck, and porch, is to be attached to the manufactured home and is otherwise included in the installation instructions or designed by a registered professional engineer or registered architect.

§ 3285.904 Utility system connections.

(a) It is recommended that the manufacturer's installation instructions indicate the following procedures be used prior to making any utility system connection:

(1) Where an LAHJ and utility services are available, that the LAHJ and all utility services each be consulted before connecting the manufactured home to any utilities, or

(2) Where no LAHJ exists and utility services are available, that the utilities be consulted before connecting the manufactured home to any utility service; or

(3) In rural areas where no LAHJ or utility services are available, that a professional be consulted prior to making any system connections.

(b) *Qualified personnel.* Only qualified personnel familiar with local requirements are permitted to make utility site connections and conduct tests.

(c) *Drainage system.* The main drain line must be connected to the site's sewer hookup, using an elastomeric coupler or by other methods acceptable to the LAHJ, as shown in Figure A to this section.

(d) *Fuel supply system.*

(1) *Conversion of gas appliances.* A service person acceptable to the LAHJ must convert the appliance from one type of gas to another, following instructions by the manufacturer of each appliance.

(2) *Orifices and regulators.* Before making any connections to the site supply, the inlet orifices of all gas-burning appliances must be checked to ensure they are correctly set up for the type of gas to be supplied.

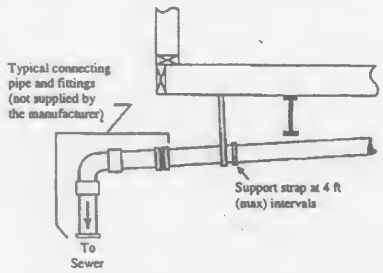
(3) *Connection procedures.* Gas-burning appliance vents must be inspected to ensure that they are connected to the appliance and that roof jacks are properly installed and have not come loose during transit.

(4) *Gas appliance start-up procedures.* The LAHJ should be consulted concerning the following gas appliance startup procedures:

(i) One at a time, opening equipment shutoff valves, lighting pilot lights when provided, and adjusting burners and spark igniters for automatic ignition systems, in accordance with each appliance manufacturer instructions.

(ii) Checking the operation of the furnace and water heater thermostats.

Figure A to § 3285.904 – Connection to Site Sewer.



Note: Fittings in the drainage system that are subject to freezing, such as P-traps in the floor, are protected with insulation by the manufacturer. Insulation must be replaced if it is removed for access to the P-trap.

§ 3285.905 Heating oil systems.

It is recommended that the installation instructions include the following information related to heating oil systems, when applicable:

(a) Homes equipped with oil burning furnaces should have their oil supply tank and piping installed and tested on-site, in accordance with NFPA 31, Standard for the Installation of Oil Burning Equipment, 2001 (incorporated by reference, see § 3285.4) or the LAHJ, whichever is more stringent.

(b) The oil burning furnace manufacturer's instructions should be consulted for pipe size and installation procedures.

(c) Oil storage tanks and pipe installations should meet all applicable local regulations.

(d) *Tank installation requirements.*

(1) The tank should be located where it is accessible to service and supply and where it is safe from fire and other hazards.

(2) In flood hazard areas, the oil storage tank should be anchored and elevated to or above the design flood elevation, or anchored and designed to prevent flotation, collapse, or permanent lateral movement during the design flood.

(3) *Leak test procedure.* Before the system is operated, it should be checked for leaks in the tank and supply piping, in accordance with NFPA 31, Standard for the Installation of Oil Burning Equipment, 2001 (incorporated by reference, see § 3285.4) or the requirements of the LAHJ, whichever is more stringent.

§ 3285.906 Telephone and cable TV.

It is recommended that the installation instructions explain that

telephone and cable TV wiring should be installed in accordance with requirements of the LAHJ and the National Electrical Code, NFPA No. 70–2005 (incorporated by reference, see § 3285.4).

§ 3285.907 Manufacturer additions to installation instructions.

A manufacturer may include in its installation instructions items that are not required by this chapter as long as the items included by the manufacturer are consistent with the Model Installation Standards in this part and do not take the manufactured home out of compliance with the MHCSS.

Dated: September 18, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 07–5004 Filed 10–18–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Friday,
October 19, 2007

Part III

Social Security Administration

20 CFR Parts 404 and 416
Revised Medical Criteria for Evaluating Digestive Disorders; Final Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2006–0094]

RIN 0960–AF28

Revised Medical Criteria for Evaluating Digestive Disorders

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving digestive disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, methods of evaluating digestive disorders, treatment, and our program experience. We are also removing listings that are redundant because they only refer to other listings, and we are making other conforming changes.

DATES: These rules are effective December 18, 2007.

FOR FURTHER INFORMATION CONTACT: James Julian, Director, Office of Medical Policy, Social Security Administration, 4470 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–4015. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Background

We are revising and making final the rules we proposed in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on November 14, 2001 (66 FR 57009). We provide a summary of the provisions of the final rules below, with an explanation of the changes we have made from the text in the NPRM. We also provide summaries of the public comments and our reasons for adopting or not adopting the recommendations in these comments in the section, "Public Comments." The final rule language follows the public comments.

After we published the NPRM, we also:

- Published final rules on April 24, 2002, entitled Technical Revisions to Medical Criteria for Determinations of Disability (67 FR 20018). In those final rules, we added listings 5.09 and 105.09 for liver transplantation. We also made minor technical changes to our listings to include references to modern imaging techniques. These final rules do not make substantive changes to the rules we published on April 24, 2002, although we are making minor editorial changes.
- Published a notice on November 8, 2004, providing a 60-day extension of the comment period on the NPRM for the limited purpose of accepting comments about the proposals regarding chronic liver disease (69 FR 64702). We explain this extension in more detail in the public comments section of this preamble.
- Held an outreach meeting in Cambridge, Massachusetts on November 17, 2004, regarding our listings for chronic liver disease. We describe this meeting in more detail in the public comments section of this preamble.

Why are we revising the listings for digestive disorders?

We reviewed the prior digestive disorder listings and determined that they should be revised in light of our program experience and advances in medical knowledge, methods of evaluating digestive disorders, and treatment. We last published final rules comprehensively revising the digestive disorder listings in the **Federal Register** on December 6, 1985 (50 FR 50068). In the introductory text to those rules, we stated our intention to periodically review and update these listings due to medical advances in treatment and our program experience.

What do we mean by "final rules" and "prior rules"?

Even though these rules will not go into effect until 60 days after publication of this notice, for clarity we refer to the changes we are making here as the "final rules" and to the rules that will be changed by these final rules as the "prior rules."

When will we start to use these final rules?

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to new applications filed on or after the effective date of these rules and to claims pending before us, as we describe below.

As is our usual practice when we make changes to our regulations, we will apply these final rules on or after their effective date when we make a determination or decision, including those claims in which we make a determination or decision after a remand to us from a Federal court. With respect to claims in which we have made a final decision and that are pending judicial review in Federal court, we expect that the court would review the Commissioner's final decision in accordance with the rules in effect at the time the final decision of the Commissioner was issued. If a court reverses the Commissioner's final decision and remands the case for further administrative proceedings after the effective date of these final rules, we will apply the provisions of these final rules to the entire period at issue in the claim in our new decision issued pursuant to the court's remand.

How long will these rules be in effect?

These rules will be in effect for 5 years after the date they become effective, unless we extend them or revise and issue them again.

What general changes are we making that affect both the adult and childhood listings for digestive disorders?

We are clarifying the listing criteria and making them easier to use by:

- Removing reference listings and, when appropriate, providing guidance in the introductory text of the listings. Reference listings are listings that are met by satisfying the criteria of another listing. For example, an impairment could meet prior listing 5.03, Stricture, stenosis, or obstruction of the esophagus, with weight loss "as described under listing 5.08." Prior listing 5.08 required weight loss of a specific amount due to "any persisting gastrointestinal disorder." Therefore, prior listing 5.03 was redundant because we could also evaluate weight loss from stricture, stenosis, or obstruction of the esophagus under listing 5.08 alone.
- Removing or updating outdated listings.
- Adding criteria to the listing for chronic liver diseases and expanding the guidance in the introductory text on how we evaluate these diseases, including specific guidance on chronic viral hepatitis infections.
- Revising and adding criteria to the listing for inflammatory bowel diseases and expanding the introductory text to include guidance on how we evaluate these digestive disorders.
- Adding a listing for short bowel syndrome and providing guidance in the introductory text for this disorder.

• Expanding the introductory text to include guidance on how we consider the effects of treatment.

• Providing general guidance in the introductory text explaining how we evaluate digestive disorders that do not meet these listings.

• Making nonsubstantive editorial changes to update the medical terminology in the listings and to be consistent with plain language guidelines.

We discuss other changes in the listings below, in our detailed explanation of the revised listings.

How are we changing the introductory text to the listings for evaluating digestive disorders in adults?

5.00 Digestive System

We are revising the introductory text for this body system to provide additional guidance for evaluating digestive disorders and to update its medical terminology. We are also removing references to digestive disorders and complications of digestive disorders, such as peptic ulcer disease, fistulae, and abscesses, that generally are not of listing-level severity. (However, as we explain below, we are including fistulae and abscesses as criteria in final listing 5.06 for inflammatory bowel disease.)

We are including relevant material from prior 5.00A in final 5.00A and final 5.00C.

We are updating and moving relevant material from prior 5.00B to final 5.00G.

We are moving relevant material from prior 5.00C to final 5.00E. We are removing the portion of prior 5.00C that dealt with peptic ulcer disease because advances in diagnosis, evaluation, and treatment of this impairment make the surgical interventions discussed in the prior section (including gastrectomy, vagotomy, and pyloroplasty) much less common.

Following is a detailed, section-by-section explanation of the final introductory text material.

5.00A—What kinds of disorders do we consider in the digestive system?

This section revises prior 5.00A. We list the major types of digestive disorders included in these listings and provide an example of a complication that may result from them. In the NPRM, we proposed to include information in this section from prior 5.00C about colostomy and ileostomy. However, we moved this information to final 5.00E as part of the general reorganization of the introductory text. We also proposed to explain that gastrointestinal impairments frequently respond to treatment; therefore, their severity should be evaluated in the context of prescribed treatment. We moved this information to 5.00C, "How do we consider the effects of treatment?" where it more logically fits.

5.00B—What documentation do we need?

In this new section, we include examples of the types of clinical and laboratory findings that should be part of the longitudinal evidence. This section also includes two sentences describing appropriate medically acceptable imaging that were not in the NPRM, but that we added in the aforementioned final rules making technical, but not policy, changes to our listings. We revised the sentence describing medically acceptable imaging so that it more appropriately reflects imaging techniques used for digestive disorders. We also moved to this section a revised version of the first sentence of proposed 5.00C2, which explains that the specific findings required by these listings must occur within the period we are considering in connection with an individual's application or continuing disability review.

In response to public comments we describe later in this preamble, we removed the sentence in proposed 5.00B1 explaining that we usually need longitudinal evidence covering a period of at least 6 months of observations and treatment unless we can make a fully favorable determination or decision without it. Instead, we are providing timeframes for the evidence requirements in each listing.

We moved proposed 5.00B2, which explained how we evaluate claims when an individual has not received ongoing treatment or does not have an ongoing relationship with the medical community despite the existence of a severe impairment, to final 5.00C where it fits more logically with our discussion of treatment issues.

5.00C—How do we consider the effects of treatment?

In the NPRM, proposed 5.00C was titled, "How do we evaluate digestive disorders that require recurring or persistent findings?" Proposed 5.00C1 defined "recurring" and "persisting" as used in listings 5.02, 5.05, 5.06, and 5.08, and proposed 5.00C2 explained when the "events" required to satisfy the listings must occur. In these final rules, we removed the references to recurring or persistent findings from the digestive listings. We also moved the first sentence of 5.00C2 to final 5.00B. We no longer need the second sentence of proposed 5.00C2 because of changes we made to the listings. Therefore, we removed all of proposed 5.00C. We explain the reasons for the changes to the listings later in this preamble.

We explain how we consider the effects of treatment in final 5.00C. This section is an expansion of proposed 5.00D. It includes six paragraphs that address treatment issues, rather than the three paragraphs we proposed. As we have already noted, we moved the additional paragraphs from other sections to present the information more logically.

General Information About Final 5.00D Through 5.00G

In the NPRM, proposed 5.00F was titled "What are our guidelines for evaluating specific digestive impairments?" Proposed 5.00F1 addressed malnutrition and weight loss, and proposed 5.00F2 addressed chronic liver disease. In these final rules, we are greatly expanding the introductory text from the NPRM in response to public comments and adding more discussion about digestive disorders, especially chronic liver disease and inflammatory bowel disease. Since we are including significantly more information in these final rules, we are addressing each kind of digestive disorder in its own separate section. Also, the guidance about specific disorders under proposed 5.00F was not in the order of the proposed listings. In the final rules, we are providing guidance that generally follows the structure of the final listings. Thus:

• Final 5.00D addresses chronic liver disease (final listing 5.05);

• Final 5.00E addresses inflammatory bowel disease (final listing 5.06);

• Final 5.00F addresses short bowel syndrome (final listing 5.07); and

• Final 5.00G addresses weight loss due to any digestive disorder (final listing 5.08).

5.00D—How do we evaluate chronic liver disease?

In final 5.00D (proposed 5.00F2), we define chronic liver disease, provide examples of it, and describe its manifestations. In response to hundreds of public comments regarding hepatitis C, we are greatly expanding this section to explain how we evaluate chronic viral hepatitis, including chronic hepatitis B and C infections, and we describe extrahepatic manifestations of these infections. In addition, we include guidance for considering the effects of specific treatment modalities for hepatitis B and C infections. We also present information on conditions that we include in the chronic liver disease listing (that is, gastrointestinal

hemorrhage, ascites or hydrothorax, spontaneous bacterial peritonitis, hepatorenal syndrome, hepatopulmonary syndrome, hepatic encephalopathy, end stage liver disease, and liver transplantation).

Final 5.00D contains 12 sections:

• Final 5.00D1, D2, and D3 are a reorganization of the information presented in proposed 5.00F2(a), F2(b), and F2(d).

• In final 5.00D1, we define chronic liver disease and name the manifestations of chronic liver disease that we consider under these listings. We removed the phrase in proposed 5.00F2 indicating that chronic liver disease must be "expected to continue for 12 months" because it is unnecessary. Under our general rules for evaluating disability, an impairment must meet the duration requirement.

• We also removed the phrase in proposed 5.00F2d explaining that we would "assess impairment due to hepatic encephalopathy under the criteria for the appropriate mental disorder or neurological listing(s)." In response to public comments, we are adding a listing for hepatic encephalopathy (final listing 5.05F).

• Final 5.00D2 presents an expanded list of examples of chronic liver disease, including some diseases, such as Wilson's disease and chronic hepatitis, which we included in the heading of prior listing 5.05 but not in the heading of final listing 5.05.

• Final 5.00D3 is an expansion of proposed 5.00F2d. It has three paragraphs that describe the symptoms (5.00D3a), signs (5.00D3b), and laboratory findings (5.00D3c) associated with the manifestations of chronic liver disease.

In response to a comment, we are including guidance in final 5.00D3a to explain that symptoms may correlate poorly with the severity of chronic liver disease.

In final 5.00D3c, we are clarifying our intent in proposed 5.00F2d, where we explained that abnormal liver function test findings may correlate poorly with the clinical severity of liver disease. Although that guidance is applicable to liver function tests such as serum total bilirubin or liver enzyme levels, it is not applicable to all tests indicative of liver function. In final 5.00D3c, we now explain that abnormally low serum albumin or elevated International Normalized Ratio (INR) levels are exceptions because they are indicators of significant liver disease. As we note below, we include criteria for abnormally low serum albumin and elevated INR in final listings 5.05B and 5.05F.

We are also not including the statement from proposed 5.00F2d that liver function tests "must not be relied upon in isolation" because it is unnecessary. In final 5.00D3c, we are also expanding the rules from what we had proposed to include information on documenting chronic liver disease with a liver biopsy or imaging studies.

• Final 5.00D4 is new; there was no corresponding section in the NPRM. We added it in response to hundreds of comments concerning the growing incidence of hepatitis. In final 5.00D4a, we provide general information about chronic viral hepatitis infections. In final 5.00D4b, we provide information about chronic hepatitis B infection. In final 5.00D4c, we provide detailed information about chronic hepatitis C infection, including a paragraph explaining adverse effects of treatment that may contribute to a finding of disability. In final 5.00D4d, we provide information about the extrahepatic manifestations of hepatitis B and C infections that may result in, or contribute to, a finding of disability.

• Final 5.00D5 corresponds to proposed 5.00F2c. In it, we provide guidance for evaluating gastrointestinal hemorrhages under final listings 5.02 and 5.05A. As we explain in more detail below, we have revised proposed listings 5.02 and 5.05A in these final rules, and final 5.00D reflects the changes to the listings. For example, in response to comments, we expanded the scope of listing 5.05A to include hemorrhages from gastric or ectopic varices and portal hypertensive gastropathy in addition to hemorrhages from esophageal varices. Also in response to comments, we removed the proposed criterion for "massive" hemorrhage requiring transfusion of at least 5 units of blood in 48 hours. Instead, final listing 5.05A requires hemorrhaging which results in "hemodynamic instability," which we describe in final 5.00D5.

• In final 5.00D6, we provide guidance for evaluating ascites or hydrothorax under final listing 5.05B. In response to comments, we have revised proposed listing 5.05B; therefore, final 5.00D6 reflects the changes we made to that listing. We explain those changes later in this preamble.

We also removed the statement in proposed 5.00F2d that current imaging techniques are capable of identifying even minimal amounts of ascites before they can be detected on physical examination. We made this change because final listing 5.05B is met based on laboratory findings coupled with documentation of the ascites or hydrothorax. If these laboratory findings are at the level specified in the listing, it is not necessary to quantify the ascites.

• Final 5.00D7, D8, and D9 are also new in these final rules. In response to comments, we are including listing criteria in final listing 5.05 for three serious complications of chronic liver disease: Spontaneous bacterial peritonitis (final listing 5.05C); hepatorenal syndrome (final listing 5.05D); and hepatopulmonary syndrome (final listing 5.05E). Each new section explains how the condition is diagnosed and the documentation requirements for the new listings.

• In final 5.00D10, we provide guidance for evaluating hepatic encephalopathy under final listing 5.05F. As noted earlier, we added this listing in response to comments. In 5.00D10a, we explain how hepatic encephalopathy is diagnosed and identify the documentation requirements for the new listing. In final 5.00D10b, we explain that we will not evaluate acute encephalopathy under listing 5.05F if it results from conditions other than chronic liver disease.

• Final 5.00D11 is also new in these final rules. In response to public comments, we added listing 5.05G, for end stage liver disease (ESLD) with SSA Chronic Liver Disease (SSA CLD) scores of 22 or greater. The SSA CLD calculation is a calculation we developed based on the Model for End Stage Liver Disease (MELD) calculation. The MELD is a numerical scale developed for the United Network for Organ Sharing (UNOS) that is used for liver allocation within the Organ Procurement and Transplantation Network. The MELD score is based on objective and verifiable medical data, and estimates an individual's risk of dying while waiting for a liver transplant. In final 5.00D11a, we explain that we will use the SSA CLD score to evaluate your end stage liver disease under final listing 5.05G. In final 5.00D11b–g, we explain how we calculate the SSA CLD score; for example, what laboratory values we use, when they must be obtained, and the formula we use to do the calculation.

• Final 5.00D12 corresponds to 5.00F2e and F2g in the NPRM. It explains how we evaluate liver transplantation 1 year after the date of the transplantation. The final rule is similar to the proposed rule; we edited it for clarity and expanded it slightly to provide more information about when liver transplantations are performed.

5.00E—How do we evaluate inflammatory bowel disease (IBD)?

In response to public comments, we are greatly expanding the listing criteria for inflammatory bowel disease, final listing 5.06, and adding a new section, final 5.00E, to the introductory text to provide guidance for evaluating IBD under these expanded criteria.

Final 5.00E contains four paragraphs:

- In final 5.00E1, we explain the general characteristics of IBD;
- In final 5.00E2, we list common symptoms, signs, and laboratory findings associated with IBD;
- In final 5.00E3, we describe some of the more common extraintestinal manifestations of IBD affecting different body systems; and
- In final 5.00E4, we explain how we consider surgical procedures such as ileostomy and colostomy. Final 5.00E4 corresponds to the first sentence of prior 5.00C and proposed 5.00A3.

5.00F—How do we evaluate short bowel syndrome (SBS)?

In response to public comments, we are adding a new listing for short bowel syndrome, final listing 5.07, and a new section in the introductory text, final 5.00F, to provide guidance for evaluating SBS under this listing.

5.00G—How do we evaluate weight loss due to any digestive disorder?

Final 5.00G corresponds to prior 5.00B and proposed 5.00F1 and reflects changes we made to proposed listing 5.08, discussed below. We are simplifying the guidance from prior 5.00B about evaluating malnutrition and weight loss. Under the final rules, it is sufficient for our purposes that the weight loss result from any medically determinable digestive disorder. We are also revising the heading of final 5.00G to refer only to weight loss, instead of the proposed reference to malnutrition and weight loss, to better reflect the content of the section.

We revised proposed listing 5.08 to use Body Mass Index (BMI) to evaluate weight loss instead of using height and weight measurements by gender. BMI is the measurement recommended by the Centers for Disease Control and Prevention (CDC) to determine appropriate weight for height. In final 5.00G1, we explain that we use BMI to evaluate weight loss due to any digestive disorder under listing 5.08 and to evaluate lesser weight loss from IBD under listing 5.06B. The latter is one of the new criteria that we added to the IBD listing in response to public comments.

In final 5.00G2, we explain how we calculate BMI. The change from height and weight measurements to BMI removed the need to provide rules for rounding of height and weight measurements; therefore, we do not include in these final rules the rules for rounding that were in proposed 5.00F1a–F1c.

5.00H—What do we mean by the phrase "consider under a disability for 1 year"?

Final 5.00H corresponds to proposed 5.00F2f; however, we revised it to make clear that the phrase refers to the date on which we must determine whether an impairment continues to meet a listing or is otherwise disabling, not the date on which disability began. We explain that we do not restrict our finding about the onset date of disability to the date of a specific qualifying event in a listing, such as a liver transplant. For example, many individuals who need liver transplants (final listing 5.09) have impairments that meet one of the criteria for chronic liver disease (final listing 5.05) before they have their liver transplants.

In the proposed rules, we had inadvertently included the explanation of the phrase "consider under a disability for 1 year" under the heading for chronic liver disease; however, we also use the phrase in final listing 5.02 for gastrointestinal hemorrhaging from any cause. Therefore, in the final rules, we explain the phrase in a section that is independent of the discussion of chronic liver disease, and we identify the three listings to which it applies.

In proposed 5.00F2f, we had also stated that the phrase was a "statement about the expected duration of disability." In reviewing that language, we realized that it could have been misunderstood to mean that we presume that an individual will no longer be disabled after 1 year. That was not our intent. Rather, we intended to indicate only that after 1 year the impairment would no longer meet the requirements of the particular listing that includes the criterion. The impairment may still be disabling at the end of the period because it may meet or medically equal another listing or result in a residual functional capacity that is consistent with a finding of disability. Also, when we consider whether an impairment continues to be disabling, we apply the medical improvement review standard in §§ 404.1594 and 416.994. For these reasons, we are not including the statement in these final rules.

5.00I—How do we evaluate impairments that do not meet one of the digestive disorder listings?

Final 5.00I is generally the same as proposed 5.00E, except that we include hepatitis B or C that results in depression as an example of a digestive impairment we would evaluate in another body system, instead of the hepatic encephalopathy example we included in proposed 5.00E1. This example was no longer appropriate because we have a listing for hepatic encephalopathy (5.05F) in the final rules.

How are we changing the listings for evaluating digestive disorders in adults?

5.01 Category of Impairments, Digestive System

Removal of Redundant or Reference Listings

We are removing four prior listings because they were reference listings and, therefore, were redundant. These four listings were met by referring to the requirements of prior listing 5.08:

- 5.03—Stricture, stenosis, or obstruction of the esophagus with weight loss;
- 5.04D—Peptic ulcer disease with weight loss;
- 5.06E—Chronic ulcerative or granulomatous colitis with weight loss; and
- 5.07D—Regional enteritis with weight loss.

All of these impairments are still covered by final listing 5.08. Chronic ulcerative or granulomatous colitis and regional enteritis are also covered by final listing 5.06. We no longer mention them explicitly in these final rules because they have been replaced by the more encompassing term "inflammatory bowel disease."

Prior listing 5.05E, hepatic encephalopathy, was also a reference listing, referring to listing 12.02. In the NPRM, we proposed to remove the listing and to add language in proposed sections 5.00E1 and 5.00F2b that reminded adjudicators to evaluate the impairment under the criteria for the appropriate mental disorder or neurological listing. However, in response to many public comments, we decided to remove the proposed guidance and to provide a new listing specifically for hepatic encephalopathy in the digestive listings, final listing 5.05F. Therefore, while we are still removing prior reference listing 5.05E, we are including a different listing for hepatic encephalopathy in these final rules.

We are also removing the following prior listings because medical knowledge, methods of evaluating digestive disorders, advances in treatment, and our program experience indicate that they are no longer appropriate indicators of listing-level severity. There has been significant progress in the treatment of these digestive disorders. Many of these disorders can be controlled or resolved and thus are less likely to be of listing-level severity. Even if listing-level severity is initially present, the 12-month statutory duration requirement will often not be met.

- 5.04—Peptic ulcer disease (demonstrated by endoscopy or other appropriate medically acceptable imaging). Advances in medical and surgical management have made less common many complications from peptic ulcer disease, such as recurrent ulceration (prior listing 5.04A), fistula formation (prior listing 5.04B), and recurrent obstruction (prior listing 5.04C). Treatment often results in significant improvement, therefore the prior listing criteria for these impairments are no longer appropriate indicators of listing-level severity.
- 5.05B—Chronic liver disease with performance of a shunt operation for esophageal varices. When we first published this listing, only surgical shunts involving extensive abdominal surgery were available. These surgeries were not usually performed until the chronic liver disease became serious enough to justify the risks associated with prolonged surgery and anesthesia. More recently, transjugular intrahepatic portosystemic shunts (TIPS), which are performed with minimal anesthesia and with fewer complications, have largely replaced abdominal surgical shunts in treating the complications of portal hypertension, such as bleeding gastroesophageal varices or refractory ascites. However, in the final listing for hepatic encephalopathy, final listing 5.05F, we are adding a criterion for a history of TIPS in combination with other findings that describe an impairment that is of listing-level severity.
- 5.05C—Chronic liver disease with specific levels of serum total bilirubin. Prior listing 5.05C required only a persistently elevated serum total bilirubin level. We are removing this listing because this laboratory finding alone does not correlate sufficiently with the ability to function.
- 5.05F—Chronic liver disease with liver biopsy. This listing required confirmation of chronic liver disease by a liver biopsy, with another specified clinical or laboratory finding. We are removing this listing because a liver biopsy, while confirming the presence of liver disease, does not correlate with any specific level of impairment severity or decrease in ability to function. We assess the clinical findings described in prior listings 5.05F1 and F3 in other final listings, and we are removing the requirement for elevated serum total bilirubin level in prior listing 5.05F2 because it does not sufficiently demonstrate impairment severity or correlate with the ability to function.
- 5.06A—Chronic ulcerative or granulomatous colitis with recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less. These criteria alone were not appropriate indicators of listing-level severity. However, we have incorporated a criterion for anemia in final listing 5.06, the new listing for IBD that we added in response to public comments.
- 5.06B and 5.07—Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction due to chronic ulcerative or granulomatous colitis or regional enteritis. These listings required only the presence of a systemic manifestation in another body system or organ, without regard to degree of severity or impact on functioning. Therefore, they were not appropriate indicators of listing-level severity. However, in response to public comments described below, we are including examples of significant extraintestinal manifestations in final 5.00E3 with instructions to our adjudicators to consider these manifestations when determining whether the individual has an impairment(s) that meets or medically equals another listing and when assessing residual functional capacity. The examples include arthritis, iritis, and other effects.
- 5.06C and 5.07C—Intermittent obstruction due to intractable abscess, fistula formation, or stenosis as a result of chronic ulcerative or granulomatous colitis or regional enteritis. Advances in surgical treatment have improved the management of these disorders, thus these listings are no longer appropriate indicators of listing-level severity. However, in final listing 5.06B, we include intestinal obstruction, abscess, fistula, and stenosis as criteria that can satisfy the requirements of the listing.
- 5.06D—Recurrence of findings in listing 5.06A, B, or C after total colectomy. We are removing this listing consistent with our removal of listings 5.06A, B, and C.
- 5.08B—Weight loss due to any persisting digestive disorder, with weight equal to or less than the values specified in Table III or IV and one of the listed abnormal laboratory findings present on repeated examinations. This listing allowed a lesser level of weight loss than that required to meet listing 5.08A when accompanied by one of the additional listed findings. Those findings, however, did not correlate with any specific level of impairment severity or decrease of ability to function that would be an accurate indicator of listing-level severity. However, in response to public comments, we are including a 10 percent weight loss from baseline as one of the criteria that can be used to meet final listing 5.06 for individuals who have IBD.

The following is a detailed explanation of the final listings.

Listing 5.02—Gastrointestinal Hemorrhaging From Any Cause, Requiring Blood Transfusion

We are expanding this listing to include "gastrointestinal hemorrhage from any cause" instead of the prior listing's "upper gastrointestinal hemorrhage from undetermined cause." We are also revising the severity criterion in this listing from anemia with a persistent hematocrit level of 30 percent or less, to a requirement for gastrointestinal hemorrhages that require blood transfusions of at least 2 units of blood per transfusion, occurring at least three times, at least 30 days apart, during a consecutive 6-month period. A hematocrit level by itself is generally not an appropriate indicator of the severity of gastrointestinal hemorrhage, and as we have already noted, does not necessarily correlate with inability to function.

In these final rules, we are clarifying the proposed rule to explain that an individual does not have to be hospitalized for transfusions under this listing. We did not indicate whether hospitalization was required in the proposed rule. Therefore, this is only an editorial change for clarity.

The proposed listing indicated in a parenthetical statement that "[a]ll incidents [hemorrhages] within a consecutive 14-day period constitute one episode." In the final listing, we are revising this statement by removing references to "incidents" and "episodes" and instead simply using the word "transfusions," since transfusions are the indicators of severity. Also, in response to a public comment, we are increasing the length of time between blood transfusions (described as "episodes" in the proposed rule) from 14 days to 30 days.

Since improvements in medical treatment may resolve the frequency of hemorrhages and thus the overall severity of the impairment, we indicate that we will consider an individual to be under a disability for 1 year following the last documented transfusion. After that, we will evaluate the residual impairment(s).

Listing 5.05—Chronic Liver Disease

We are replacing prior listing 5.05 with criteria that more accurately reflect listing-level severity.

• We are removing the parenthetical examples of chronic liver diseases from the heading of prior listing 5.05 because these references could have been misinterpreted to mean that we included only those specific conditions under the listing. However, in response to comments, we continue to use Wilson's disease and chronic hepatitis as examples of chronic liver diseases that are covered by final listing 5.05 in final 5.00D2 of the introductory text. In a change from the NPRM, and in response to many comments, we are revising the heading of the listing to refer to "chronic liver disease" only. We removed "and cirrhosis of any kind" from the heading because cirrhosis is a form of chronic liver disease.

• In final listing 5.05A, we are expanding the scope of prior and proposed listing 5.05A in response to comments to include hemorrhaging from esophageal, gastric, or ectopic varices, or from portal hypertensive gastropathy. The proposed listing required "massive" hemorrhage requiring "5 units of blood in 48 hours." In response to comments, we changed the requirement for "massive" hemorrhage to hemorrhaging that results in hemodynamic instability, and we changed the transfusion requirements from the proposed "5 units of blood in 48 hours" to "at least 2 units of blood." We chose 2 units of blood because this is the minimum amount of blood that is usually transfused. We define "hemodynamic instability" in 5.00D5.

Newer techniques in primary prevention and treatment of bleeding gastroesophageal varices, for example, TIPS, banding, sclerotherapy, and laser therapy, have significantly improved the management of bleeding varices. Based on these advances, it is no longer appropriate to presume disability for 3 years as under prior listing 5.05A. Therefore, the final listing (like the proposed listing) provides that we will consider an individual disabled for 1 year following the last documented transfusion. After that, we will evaluate the residual impairment(s).

Final listing 5.05B corresponds to prior listing 5.05D, ascites due to chronic liver disease. In response to comments, we are also including hydrothorax in the listing because ascitic fluid can collect in the chest cavity and result in a very serious impairment. Therefore, we are including thoracentesis in the documentation requirements in final listing 5.05B1 because it provides a definitive diagnosis of hydrothorax, just as paracentesis provides a definitive diagnosis of ascites.

As in the NPRM, we are revising the required time period in which the evaluations showing ascites or hydrothorax must occur from 5 months to 6 months because, in our experience, a 6-month period enables us to make a more reliable prediction of duration of an impairment of listing-level severity. We also are requiring that evaluations be done at least 60 days apart within the 6-month period to substantiate the chronic nature of the impairment.

In response to public comments, final listing 5.05B2 now requires documentation of ascites or hydrothorax by physical examination or by appropriate medically acceptable imaging, but not both, as we proposed in the NPRM. However, if the ascites or hydrothorax is documented by physical examination or imaging rather than paracentesis or thoracentesis, we require additional laboratory findings that confirm very serious chronic liver disease. As in proposed listing 5.05B2a, we require serum albumin of 3.0 g/dL or less. In response to public comments, we changed the proposed criterion for a measure of prothrombin time to a criterion for an elevated International Normalized Ratio (INR) of at least 1.5 in final listing 5.05B2b. The public comments correctly indicated that INR is a more widely used study.

• In response to public comments, we are also adding three new listings for serious complications of chronic liver disease: Final listing 5.05C for spontaneous bacterial peritonitis; final listing 5.05D for hepatorenal syndrome; and final listing 5.05E for hepatopulmonary syndrome. These complications are so severe that we require only one occurrence of any one of them, shown by the requisite findings, to satisfy the listing.

• As already noted, we are also adding a new listing 5.05F for hepatic encephalopathy. The new listing requires hepatic encephalopathy documented by abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness, present on at least two evaluations at least 60 days apart within a consecutive 6-month period, with associated physical signs or laboratory findings, occurring with the same frequency and during the same time period; or a history of a TIPS or any surgical portosystemic shunt procedure.

• In response to comments that individuals on liver transplant lists should qualify, we are adding another new listing, final listing 5.05G, for evaluating individuals with ESLD. We are using an SSA CLD score criterion as an objective means to measure listing-level severity. As discussed above, we based the SSA CLD calculation on the MELD calculation used by UNOS to prioritize individuals ages 12 and over on a national liver transplantation list according to the severity of their liver disease. (There is also a Pediatric End Stage Liver Disease scoring system, called PELD, for children under age 12. We have developed an SSA Chronic Liver Disease—Pediatric (SSA CLD–P) calculation based on that system that we have included in the part B listings, as we explain below.) The SSA CLD score determination relies only on objective criteria, with standardized laboratory determinations that are readily available and reproducible.

We did not agree that all individuals on transplant lists should qualify under our listings because the threshold criteria for placement on a transplant list vary widely throughout the country and some individuals are placed on transplantation lists well before they have listing-level impairments. In the final rule, we provide that a SSA CLD score of 22 or greater meets the listing. We chose this score based on the clinical severity represented by the laboratory values contained in the SSA CLD score.

For final listing 5.05G, we require two calculations of SSA CLD scores, at least 60 days apart, and that the scores must be calculated within a consecutive 6-month period, consistent with other provisions in these final rules.

Listing 5.06—Inflammatory Bowel Disease

We are combining portions of prior listings 5.06 and 5.07 into final listing 5.06. Ulcerative colitis, Crohn's disease, granulomatous colitis, and regional enteritis are now commonly referred to as "inflammatory bowel disease" (IBD).

In the NPRM, proposed listing 5.06 required documentation of IBD with persistent or recurrent intestinal obstruction. The proposed listing repeated the criteria from prior listing 5.07A, clarified that the intestinal obstruction must be documented by appropriate medically acceptable imaging or operative findings, and

included the requirement for documentation of two episodes of obstruction over a consecutive 6-month period despite prescribed treatment, to ensure that there is a chronic impairment.

In response to public comments, we are significantly revising and expanding final listing 5.06. As in the proposed listing, the introductory paragraph of final listing 5.06 requires documentation of IBD by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings. As in the NPRM, final listing 5.06A requires obstruction of stenotic areas in the small intestine or colon with proximal dilatation. We are clarifying in the final rule that adhesions do not satisfy the requirement for obstruction. This is not a substantive change but a clearer statement of our intent that there must be obstruction that results from IBD. We are also clarifying that, in these cases, the stenotic areas may be shown by surgery or by medically acceptable imaging. In addition, we are clarifying the language we had proposed by requiring hospitalization for treatment of the obstruction (intestinal decompression or surgery). This is not a substantive change from the NPRM because listing-level obstruction of a stenotic area would require hospitalization for one of these types of treatment. Therefore, the requirement in the final listing will only help to confirm the existence of listing-level obstruction caused by IBD.

We are deleting the proposed requirement for persistent or recurrent obstruction over a consecutive 6-month period despite prescribed treatment in response to a public comment. Instead, we are requiring that the findings occur on at least two distinct occasions at least 60 days apart within a consecutive 6-month period.

Final listing 5.06B includes six other manifestations of IBD that were suggested by commenters. Consistent with most of the other criteria in the final rules for impairments that have episodic manifestations, final listing 5.06B requires that two of the six criteria be present on at least two evaluations, occurring at least 60 days apart within the same consecutive 6-month period, except for listing 5.06B6, which requires supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

Listing 5.07—Short Bowel Syndrome

As we explained earlier, we are removing prior listing 5.07, for regional enteritis. Instead, we evaluate this condition under final listing 5.06, for IBD. However, in response to comments regarding individuals who need parenteral nutrition, we are adding a new listing, final listing 5.07, for short bowel syndrome to address situations in which post-operative nutritional needs cannot be met orally or with supplemental enteral nutrition. This final listing requires a diagnosis of short bowel syndrome due to surgical resection of more than one-half of the small intestine with resulting dependence on daily parenteral nutrition via a central venous catheter.

Listing 5.08—Weight Loss Due to Any Digestive Disorder

In this final rule, we changed the heading of prior and proposed listing 5.08, "Weight loss due to any persisting gastrointestinal disorder" to "Weight loss due to any digestive disorder." We deleted the word "persisting" for reasons we explain in the public comments section of this preamble.

In final listing 5.08, we are establishing the severity of the weight loss based on the CDC's BMI formula, rather than the Metropolitan Life Insurance Company's weight charts we used in the proposed rules and which were last updated in 1983. When we published the NPRM in 2001, we indicated that neither the CDC nor any other recognized authority known to us had determined a BMI for adults that would be consistent with listing-level severity weight loss. However, since that time, we determined that we could establish a BMI comparable to the severity standard in the weight charts. We established this BMI level in the final listing by calculating the BMI for each value on proposed weight tables I and II and averaging them.

We are changing to the more widely used BMI for several other reasons. For example, this change eliminates the need for gender tables, as BMI is not gender-specific in adults. Also, we were not able to apply the prior and proposed weight tables to individuals whose height was outside the table values, and instead had to review the evidence and determine whether the impairment medically equaled the listing. Now we can apply the BMI formula to all cases regardless of the individual's height. Also, our use of BMI in this body system is consistent with our use of BMI in Social Security Ruling 02–1p, Title II and XVI: Evaluation of Obesity (67 FR 57859).

Listing 5.09—Liver Transplantation

In the NPRM, we proposed to add listing 5.09 for liver transplantation. However, we published final rules adding this listing on April 24, 2002 (67 FR 20018) based on another NPRM in which we had also proposed to add this listing. (See 65 FR 6934.) Therefore, in these final rules, we are retaining the listing we published in April 2002, revising it to include the phrase "1 year following the date of transplantation," and changing the punctuation to make it easier to read. The only public comments we received about this listing agreed that we should add it.

How are we changing the introductory text to the listings for evaluating digestive disorders in children?

105.00 Digestive System

As in the adult rules, we are revising the introductory text to the digestive system in part B, final 105.00, to provide additional guidance for adjudicating digestive disorders. Where necessary, we are adding information specific to children; however, we are repeating much of the introductory text of final 5.00 in final 105.00. This is because, for the most part, the same basic rules for establishing and evaluating the existence and severity of digestive disorders in adults also apply to children. We are making a number of changes from the NPRM in the final rules to make part B even more consistent with part A than we originally proposed. As we note below, we are also adding:

- Listing 105.02 for gastrointestinal hemorrhaging from any cause requiring blood transfusion;
- Listing 105.05A for hemorrhaging from esophageal, gastric, or ectopic varices, or from portal hypertensive gastropathy;
- Listings 105.05C, D, and E for complications of chronic liver disease;
- Listing 105.05F for hepatic encephalopathy;
- Listing 105.05G for end stage liver disease with SSA CLD and SSA CLD–P score criteria;
- Listing 105.05H for extrahepatic biliary atresia;
- Listing 105.06 for inflammatory bowel disease;
- Listing 105.07 for short bowel syndrome; and
- Listing 105.10 for the need for supplemental daily enteral feeding via a gastrostomy.

The following discussions describe only the significant provisions that are unique to the childhood rules or that require further explanation. We do not note differences like the fact that we use references to childhood listings instead of adult listings or that we use references to "children" instead of adults.

105.00A—What kinds of disorders do we consider in the digestive system?

Final 105.00A corresponds to final 5.00A, except that we are adding information to explain that under the childhood listings we also consider congenital abnormalities involving the organs of the gastrointestinal system.

105.00B—What documentation do we need?

The only substantive difference between final 105.00B and final 5.00B is a statement noting that we may also need assessments of a child's growth and development.

105.00D—How do we evaluate chronic liver disease?

The new guidance on chronic liver disease in final 105.00D generally corresponds to the information in final 5.00D in the adult rules, except for information specific to the complications of chronic liver disease in children and two sections (final 105.00D11b and 105.00D12) that are not in part A because they provide guidance for listing criteria that are only in the final childhood rules.

In final 105.00D11b, we provide information about the SSA Chronic Liver Disease—Pediatric (SSA CLD–P) calculation, which we use under final listing 105.05G2 for children who have not attained age 12. We explain in final 105.00D11b(iv) that we will not purchase the INR value required to calculate the SSA CLD–P score because obtaining the necessary amount of blood to perform this test in small children often requires an invasive procedure. We further explain that if we do not have an INR value for a child under 12 within the applicable time period, we will use an INR value of 1.1 for the SSA CLD–P calculation. (In final 105.00D11a, we provide the same guidelines about the SSA CLD calculation as we do in part A because the SSA CLD calculation is applicable to children age 12 to the attainment of age 18.)

In final 105.00D12, we provide guidance for applying final listing 105.05H for extrahepatic biliary atresia, a congenital disorder of the liver.

105.00E—How do we evaluate inflammatory bowel disease (IBD)?

Final 105.00E corresponds to final 5.00E. In the NPRM, we proposed a short section (proposed 105.00F4) on IBD that provided guidance for evaluating IBD under proposed listing 105.06. As in final listing 5.06 in part A, we have greatly expanded proposed listing 105.06 in these final rules, so we are also including the more detailed guidance for evaluating the expanded listing criteria of final listing 105.06 that we provide in part A for final listing 5.06.

105.00G—How do we evaluate malnutrition in children?

Final 105.00G (proposed 105.00F1) reflects changes we made to final listing 105.08, Malnutrition due to any digestive disorder. In final 105.00G1, we explain that digestive disorders may result in malnutrition and growth retardation. We also explain that we document the presence of a digestive disorder with associated chronic nutritional deficiency despite prescribed treatment using the malnutrition criteria in final listing 105.08A.

The malnutrition criteria in final listing 105.08A generally correspond to the laboratory findings we presented as examples in the introductory text, proposed 105.00F1(a)(1), F1(a)(2), and F1(a)(4). We are including them as listing criteria in final listing 105.08A in response to a public comment.

Final listing 105.08A1 corresponds to proposed 105.00F1(a)(1). However, we changed the criterion for anemia to a hemoglobin of less than 10.0 g/dL, rather than less than 8 g/dL, to be consistent with the anemia criteria elsewhere in these final listings. Final listing 105.08A2 requires low serum albumin levels and corresponds to proposed 105.00F1(a)(2). Final listing 105.08A3 corresponds to proposed 105.00F1(a)(4), except that we added the phrase "fat soluble" to clarify the type of vitamin deficiency we intended. We also removed the concluding phrase "despite aggressive medical and nutritional therapy" because the introductory paragraph of the listing requires findings "despite continuing treatment as prescribed." We did not include as a listing criterion the example of intractable steatorrhea (malabsorption of dietary fats) quantified by fecal fat excretion that we had included in proposed 105.00F1(a)(3); most pediatric laboratories no longer do this type of testing, and steatorrhea will usually result in the vitamin deficiency we describe in final listing 105.08A3.

In 105.00F1b of the proposed rules, we included a paragraph discussing Body Mass Index (BMI) measurements. We explained in the preamble of the NPRM that we proposed to add this discussion because proposed listing 105.08 included criteria based on BMI measurements. (See 66 FR at 57015 and 57020.)

We are not including this paragraph in the final rules because, when we reviewed it, we realized that it did not provide guidance that would have been useful to the application of final listing 105.08 and that it could have been confusing for the following reasons:

- As in the NPRM, final listing 105.08 includes two criteria for documenting growth retardation, one for children under age 2 (final listing 105.08B1) and one for children age 2 and older (final listing 105.08B2). Only final listing 105.08B2 includes a criterion for BMI, and it refers to the CDC's latest BMI-for-age growth charts or data files. The language we included in proposed 105.00F1b did not explain this clearly.
- Furthermore, much of the language repeated what the listing already said, and we believe that the language that was not redundant of the listing was unnecessary. The first sentence defined in basic terms how to calculate a BMI; however, it was oversimplified for children.
- The proposed paragraph also referred to the fact that the CDC has determined that a BMI-for-age less than the fifth percentile meets its criteria for underweight. However, since the CDC does not calculate a figure or indicate a cutoff that it judges to be indicative of malnutrition, this guidance in the proposed rule would not have been useful for applying final listing 105.08.

In final 105.00G2, which replaces proposed 105.00F1b, we are providing information that is more relevant to the application of final listing 105.08B. We explain that we use the most recent growth charts published by the CDC. In final 105.00G2a, we explain that we use the CDC's age- and gender-specific weight-for-length charts for children who have not attained age 2. In final 105.00G2b, we explain that we use the CDC's gender-specific BMI-for-age charts for children age 2 or older. In final 105.00G2c, we explain how we calculate BMI, and in final 105.00G2d we provide the corresponding BMI formulas. Final 105.00G2c and 105.00G2d are the same as final 5.00G2a and 5.00G2b.

105.00H—How do we evaluate the need for supplemental daily enteral feedings via a gastrostomy?

Final 105.00H is a new section that provides guidance for evaluating the need for feeding gastrostomies for children under age 3 under final listing 105.10. We had previously provided for a finding of functional equivalence for children under age 3 who require a gastrostomy for feeding in § 416.926a(m)(10). We are now making that example of functional equivalence a listing and removing the example from § 416.926a(m).

105.00I—How do we evaluate esophageal stricture or stenosis?

Final 105.00I corresponds to proposed 105.00F3 and includes minor editorial changes for clarity. In this section, we provide guidance for evaluating esophageal stricture or stenosis, which we had listed in prior listing 105.03, a listing we are removing because it is a reference listing. In the final rule, we explain that these conditions may be evaluated under listing 105.08 or 105.10. We also provide guidance for adjudicating these conditions when they do not meet a listing but the child still has problems maintaining nutritional status.

105.00K—How do we evaluate impairments that do not meet one of the digestive disorder listings?

Final 105.00K corresponds to final 5.00I, except that we include two additional examples of digestive impairments relevant to children that we would evaluate in other body systems. These are the same additional examples we included in proposed 105.00E1; however, we made minor editorial changes to these examples for clarity.

How are we changing the listings for evaluating digestive disorders in children?

105.01 Category of Impairments, Digestive System

Removal of Redundant or Reference Listings

As in the adult listings, we are removing the following reference listings and other listings that are no longer appropriate:

- 105.03—Esophageal obstruction, caused by atresia, stricture or stenosis, which referred to listing 105.08;
- 105.05F—Chronic liver disease with chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum total bilirubin of 2.5 mg percent or greater;
- 105.07B—Chronic inflammatory bowel disease with malnutrition, which referred to listing 105.08; and
- 105.07C—Chronic inflammatory bowel disease, with growth impairment as described under the criteria in 100.03. However, we are adding material to the introductory text in final 105.00G2 to address the assessment of growth retardation that is secondary to any digestive disorder.

Prior listing 105.05E, for hepatic encephalopathy, was a reference listing, referring to listing 112.02 for organic mental disorders. For the reasons we cited in our discussion of prior listing 5.05E (final listing 5.05F) above, we are including criteria for evaluating hepatic encephalopathy in the digestive listings, final listing 105.05F, instead of evaluating this impairment under the criteria for organic mental disorders. We will also evaluate the impairment in prior listing 105.05D, hepatic coma, under final listing 105.05F.

The following is a detailed explanation of the changed listing criteria where they differ from the part A listings.

Listing 105.02—Gastrointestinal Hemorrhaging From Any Cause, Requiring Blood Transfusion

Final listing 105.02, which corresponds to final listing 5.02, was not in the NPRM. We are adding it in response to a public comment described later in this preamble. The final listing is the same as final listing 5.02, except for the amount of blood transfused. In final listing 105.02, we provide a ratio of volume of blood to the child's weight, which is a more medically appropriate standard for children.

Listing 105.05—Chronic Liver Disease

Final listing 105.05A replaces prior listing 105.05C, chronic liver disease with esophageal varices. The final listing is the same as final listing 5.05A, except for the amount of blood transfused. As in final listing 105.02, we provide a ratio of volume of blood to the child's weight, which is a more medically appropriate standard for children.

Final listings 105.05C, D, E, F, and G correspond to final listings 5.05C, D, E, F, and G in part A, with appropriate changes to reflect findings and laboratory values for children. Also, final listing 105.05G includes both an SSA CLD score criterion for children age 12 and older (final listing 105.05G1) and an SSA CLD–P score criterion for children who have not attained age 12 (final listing 105.05G2).

We provide that an SSA CLD–P score of 11 or greater meets the listing. We chose this score based on the clinical severity represented by the values contained in the SSA CLD–P score, which we believe represents the degree of severity consistent with listing level severity.

For final listing 105.05G2, we require two calculations of SSA CLD–P scores, at least 60 days apart, and the scores must be calculated within a consecutive 6-month period, consistent with other provisions in these final rules.

Final listing 105.05H replaces prior listing 105.05A, inoperable biliary atresia. The new listing requires extrahepatic biliary atresia, as diagnosed on liver biopsy or intraoperative cholangiogram. We will consider children who meet this requirement to be disabled for 1 year following the diagnosis, and we will evaluate residual liver function after that period.

Listing 105.06—Inflammatory Bowel Disease (IBD)

We are redesignating prior listing 105.07, chronic inflammatory bowel disease, as final listing 105.06 for consistency with the corresponding adult listing. Final listing 105.06 is the same as final listing 5.06, except that it does not include a criterion for weight loss from baseline. This criterion is inappropriate for children because they are continually growing, and therefore do not have a "baseline weight." (We can evaluate weight loss, inadequate growth, and malnutrition secondary to IBD under final listing 105.08.)

Proposed listing 105.06B required IBD with perineal or intra-abdominal complications, such as abscess, fistulae, or fecal incontinence. These complications must have been intractable despite medical or surgical treatment, and clinically documented over a 6-month period. Final listing 105.06 includes a criterion for perineal disease with draining abscess or fistula. However, we did not include fecal incontinence because final listing 105.06 includes a much wider array of complications resulting from IBD and children with listing-level impairments who have fecal incontinence would be evaluated under criteria in final listing 105.06.

Listing 105.07—Short Bowel Syndrome (SBS)

This new listing is the same as final listing 5.07 except that it applies to children. It eliminates the need for a finding of functional equivalence for children of any age who have a frequent need for a central venous alimentation catheter, as we described in the example of functional equivalence in prior § 416.926a(m)(3).

Listing 105.08—Malnutrition Due to Any Digestive Disorder

Final listing 105.08 corresponds to proposed listing 105.08; however, as we have already noted, we are including as listing criteria three of the examples of laboratory findings that would confirm chronic nutritional deficiency we had included in proposed 105.00F1a. We also removed the statement from proposed listings 105.08A and B that the required findings are "expected to persist for at least 12 months," because it is unnecessary. Under our general

rules for evaluating disability, an impairment must meet the duration requirement.

Final listing 105.08 is consistent with the weight-for-length and BMI-for-age charts and data file tables from the CDC. According to the CDC, these are the recommended measurements to determine if an individual's weight is appropriate for his or her height. On May 30, 2000, the CDC updated its 1977 weight-for-length growth charts, and introduced BMI-for-age charts and tables.[1] The CDC explained that:

> These BMI-for-age charts were created for use in place of the 1977 weight-for-stature charts. BMI * * * is used to judge whether an individual's weight is appropriate for their height. * * * The new BMI growth charts can be used clinically beginning at 2 years of age, when an accurate stature can be obtained.

As we have already noted, the CDC also defines "underweight" in children as a BMI-for-age less than the fifth percentile, but neither the CDC nor any other recognized expert authority has published guidelines for the classification of malnutrition based on BMI. Therefore, we will continue to monitor this area, and in the meantime, continue to use our criterion of persistence of weight below the third percentile to show listing-level severity based on malnutrition for children under 2 years of age. The third percentile is generally accepted as the lower limit of the normal range for most biologic measurements, and persistence below this level would warrant evaluation and intervention. Likewise, since the current BMI-for-age charts provide percentiles, we will continue to use measurements below the third percentile as the listing-level criterion for children age 2 and older.

In response to a comment, we revised proposed listing 105.08B to indicate that we use the latest editions of the CDC's charts, which will ensure that the listing remains current if the CDC revises its charts in the future.

Listing 105.10—Need for Supplemental Daily Enteral Feeding via a Gastrostomy

In response to a public comment, we are adding final listing 105.10 for the need for a feeding gastrostomy. Because of this new listing, we no longer need the functional equivalence example in prior § 416.926a(m)(10) for a gastrostomy in a child who has not attained age 3. We are also clarifying that the gastrostomy must be used for supplemental enteral feeds on a daily basis.

[1] Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States. May 30, 2000.

Conforming Changes

Listing 6.02—Impairment of Renal Function

For the reasons discussed in the explanation of changes for listing 5.08, Weight loss due to any digestive disorder, we are also revising listing 6.02C4 to use BMI. We are also removing the criterion for "recent" weight loss and replacing it with the same criterion we use in the final digestive disorder listings, a requirement for two measurements at least 60 days apart within a 6-month period.

Section 416.924b—Age as a Factor of Evaluation in the Sequential Evaluation Process for Children

We are correcting the reference in the last sentence of § 416.924b(b)(3), which should refer to the functional equivalence examples in § 416.926a(m)(7) or (8) but incorrectly designates this functional equivalence rule as § 416.924a rather than § 416.926a. Also, because we are removing two of the examples of functional equivalence, §§ 416.926a(m)(3) and (10), and redesignating the remaining examples as explained below, we are revising the reference to refer to final § 416.926a(m)(6) or (7).

Section 416.926a—Functional Equivalence for Children

We are removing paragraph (m)(3), the example of functional equivalence based on a frequent need for a life-sustaining device at home or elsewhere, because we are including the need for a central venous alimentation catheter as final listing 105.07 and because we now no longer need this functional equivalence example.

We are also removing paragraph (m)(10), the functional equivalence example of gastrostomy in a child who has not attained age 3, as it is now final listing 105.10.

Other Changes

We made many editorial changes from the NPRM for clarity in these final rules. For example, we:

- Revised many sentences to put them into active voice, to simplify them, and to use more consistent style throughout the final rules;
- Reorganized some paragraphs into a more logical order;
- Clarified several headings;
- Eliminated some redundancy from the proposed provisions; and
- Revised language for greater consistency between part A and part B.

Also, many of the paragraph designations in the NPRM were different from the way we designate paragraphs in our other body system listings. We changed those designations so they are in the same format as our other listings sections. None of these changes are substantive.

Public Comments

In the NPRM we published in the **Federal Register** on November 14, 2001 (66 FR at 57009), we provided the public with a 60-day comment period. The comment period ended on January 14, 2002. In response to that NPRM, we received letters, telefaxes, and e-mails from 11 commenters containing comments pertaining to the changes we proposed. The commenters included physicians, advocates for individuals who have disabilities, individuals who have digestive disorders, and State agencies that make disability determinations for us.

On November 8, 2004, we published a limited reopening of the comment period of the NPRM in the **Federal Register** (69 FR 64702) to request additional comments about our proposals to revise and remove chronic liver disease listings. We published this limited reopening of the comment period because we believed those proposals were significant. The comment period also lasted 60 days and ended on January 7, 2005. In response to this reopening, we received letters, telefaxes, and e-mails from 539 commenters pertaining to the changes we proposed regarding chronic liver disease. The commenters included physicians, advocates for individuals who have chronic liver disease, individuals who have chronic liver disease, and State agencies that make disability determinations for us.

In addition, on November 17, 2004, during the reopened comment period, we held an outreach meeting in Cambridge, Massachusetts. At the outreach meeting, physicians, advocates for individuals with liver disorders, and individuals who have liver disorders provided additional comments about chronic liver disease which we included in the rulemaking record for these final rules.

We carefully considered all of the written comments in response to the two **Federal Register** documents and the comments we received at the outreach meeting. Because some of them were long and many comments were similar, we have condensed, summarized, and paraphrased them below. We have tried to present all views adequately and to respond to all of the issues raised by the commenters that were within the scope of these rules. We provide our reasons for adopting or not adopting the

recommendations in the summaries of the comments and our responses below.

Proposed 5.00A and 105.00A—What kinds of disorders do we consider in the digestive system?

Comment: A commenter who has a colostomy asked us to include colostomies in our listings. He described the problems he had been having with his colostomy.

Response: We did not adopt the comment. Although we agree with the commenter that some people who have colostomies are unable to work, we did not add a listing for this because the vast majority of people who have colostomies do not experience long-term complications that would meet the 12-month duration requirement and they are able to work. However, we did include a statement in final 5.00E4 indicating that if an individual is not able to maintain nutrition due to surgical diversions of the intestinal tract, including ileostomy and colostomy, we will evaluate the impairment under listing 5.08.

Proposed 5.00B and 105.00B—What documentation do we need?

Comment: Several commenters expressed concerns about our statement in the first sentence of proposed 5.00B1 and 105.00B1 that we usually need longitudinal evidence covering a period of at least 6 months of observations and treatment, unless we can make a fully favorable decision without it. One commenter was concerned that the proposed requirement was overly burdensome, especially for low-income claimants and the homeless who are unable to access health care. This commenter noted that proposed 5.00B2 (incorrectly designated as 5.00B3 in the NPRM) provided guidance for considering medical equivalence when an impairment did not meet a listing, but was concerned that adjudicators might overlook that guidance because it was in a separate paragraph. The commenter was also concerned that administrative law judges would need more testimony from medical experts to consider the issue of medical equivalence. The commenter asked us to provide more alternatives for claimants who, through no fault of their own, are unable to access continuous health care treatment.

Some commenters stated that adjudicators may consider the 6-month requirement for observation and treatment absolute and not read the introductory text in proposed sections 5.00B3 and 105.00B2. The commenters believed that the proposed provision would require our adjudicators to defer the adjudication of significant numbers of cases with documented impairments of the digestive system until there was 6 months of evidence, even when it was obvious that those disorders were not of listing-level severity. These commenters believed that many digestive disorder cases could be fairly evaluated after 3 months of treatment and that we could give adjudicators more room for judgment. One commenter also suggested that we combine a requirement for 3 months of treatment with the establishment of a "medical improvement expected" diary in appropriate cases, in order to reflect advances in medical treatment and the fact that some individuals will respond to treatment.

Many commenters noted that there are some conditions that are irreversible or progressive and would not require a 6-month observation period since the likelihood of substantial improvement with these conditions is negligible.

Response: In response to these comments, we reorganized proposed 5.00B1 and 105.00B1 and removed the sentence stating that we usually need evidence covering a 6-month period of observations and treatment. We did not mean to imply that we would require evidence of 6 months of observation and treatment for all cases involving digestive disorders. We agree with the commenters that some digestive disorders are irreversible and progressive and could be fairly evaluated after 3 months of treatment, or even less. For example, final listing 5.02 does not require 6 months of evidence if the 3 required hemorrhages and transfusions occur in less than a 6-month period, as long as the transfusions are at least 30 days apart; and listing 5.05A requires only one episode of bleeding varices that require blood transfusion. In response to comments, we also added three new listings for chronic liver disease (final listings 5.05C, D, and E) that can be satisfied with documentation of the required findings on only one occasion.

We recognize that some individuals may not have access to ongoing treatment and that, because of this, they may not be able to demonstrate that their impairments meet the criteria of listings in this body system. As we explain in final 5.00C6 and 105.00C6, it may be necessary to determine whether an individual's impairment or impairments medically equal a listing or are disabling based on consideration of residual functional capacity. We do not believe that adjudicators will overlook this guidance in the introductory text because it reflects general adjudicative policy that applies to all the body system listings. Also, our adjudicators are well aware that they are required to consult the information in the introductory text when they apply the listings. We will also provide training for our adjudicators on these rules.

It may be possible that administrative law judges (ALJs) will need to consult with medical experts somewhat more frequently than they did under the prior listings, but we do not believe that there will be a large increase in this need. We expect that most cases that would have met prior digestive disorder listings and that will not meet any of the final listings will require an individualized residual functional capacity assessment and will not require such expert medical input to determine whether the individual's impairment medically equals a listing.

Comment: Another commenter noted that, while many homeless individuals infected with hepatitis C virus (HCV) do not have medical records that reflect a complete longitudinal history of medical treatment, they may have some medical evidence. The commenter said that we should contact the treating physicians instead of purchasing consultative examinations. The commenter expressed the view that a consultative examiner may not be familiar with treating people with HCV, especially those who are homeless. The commenter indicated that SSA could save financial resources and secure better evidence for use in evaluations if all community medical sources were contacted.

Response: We make every reasonable effort to secure evidence from individuals' treating physicians and other medical sources. Sections 404.1512 and 416.912 of our regulations require us to make every reasonable effort to obtain a complete medical history from an individual's medical sources. However, the regulations also explain that we will order a consultative examination if the information we need is not readily available from the records of the individual's medical sources or if we are unable to obtain clarification from the medical sources.

Proposed 5.00C and 105.00C—How do we evaluate digestive disorders under listings that require persistent or recurrent findings?

Comment: One commenter stated that our requirement that a "recurrent" or "persistent" finding must have lasted or be expected to last for 12 months is medically inappropriate for decompensated cirrhosis because continued deterioration is expected. The commenter also indicated that three events within a 6-month period with 1

month between events is medically inconsistent with the natural history of chronic liver disease because the disease is chronic and, therefore, progressive. The commenter acknowledged that some individuals with chronic liver disease experience episodes of symptoms and signs, but said that we should not have episodic requirements alone for the evaluation of the condition.

Response: We agree with the commenter that we do not need episodic requirements or evidence of persistence for all cases involving chronic liver disease. Based on this and other comments, we removed proposed 5.00C and 105.00C and added final listings 5.05C through 5.05G. By making these changes, we provide additional criteria that are appropriate for evaluating the impairments of individuals who have progressive, chronic liver disease. Final listings 5.05A, 5.05C, 5.05D, and 5.05E provide for a determination of disability based on findings on a single occasion. On the other hand, final listings 5.05B, 5.05F, 5.05G, and 5.08 include conditions that may be acute or chronic and that may respond to treatment. They contain requirements for episodes of symptoms and signs.

Proposed 5.00D and 105.00D (final 5.00C and 105.00C)—How do we consider the effects of treatment?

Comment: One commenter suggested that we discuss how the side effects of medication can affect a child's growth and social development. Another commenter noted that treatment side effects can be debilitating and can cause functional limitations that validate disability. The commenter recommended that we expand our system of disability evaluation to acknowledge and articulate how treatment can affect a child's physical, emotional, and social development, including specifying how these factors (including school performance) should be evaluated. This commenter said that we should integrate all aspects of functional development into the evaluation criteria.

Response: We did not adopt these comments because we believe that these final rules and our other rules sufficiently address issues of developmental delay and other potentially adverse effects of treatment. These final rules include general guidance to our adjudicators in final 105.00C about assessing any adverse effects of treatment. Final 105.00D4 includes a detailed discussion of the effects of treatment for chronic viral hepatitis infections, including hepatitis B and C virus. We explain that treatment for chronic viral hepatitis infections will vary considerably due to a child's age, medication tolerance, treatment response, and duration of the treatment. While we do not include the specific example of effects on "development" recommended by the first commenter, we do include a number of other examples of more common adverse effects of treatment in children.

In addition, we have other rules for evaluating disability in children, and these rules address the kinds of issues raised by both commenters. In § 416.924a(b)(9) of our regulations, we include a detailed explanation of how we consider the effects of treatment in children. This section explains that we consider, among other things, any functional limitations that are caused by the side effects of treatment and the frequency of the need for treatment; in the latter case, we explain that frequent therapy may interfere with a child's participation in typical daily activities, which implicitly can also affect development. Likewise, in § 416.926a we include additional guidance explaining that we consider limitations that result from treatment when we make determinations about functional equivalence (see § 416.926a(a)). In the sixth domain of functioning, "health and physical well-being," we consider the cumulative physical effects of physical or mental impairments and their associated treatments or therapies on a child's functioning (see § 416.926a(1). We also explain that medications and other treatments a child receives may have physical effects that also limit his or her performance of activities (see § 416.926a(a)(3)).

Comment: One commenter disagreed with the proposed guidance on parenteral and specialized enteral nutrition. The commenter stated that individuals who have intravenous or gastrostomy tubes require special equipment and frequently require multiple feedings a day that may entail a significant amount of time. In the commenter's opinion, this is so intrusive that individuals who require parenteral or specialized enteral nutrition to avoid debilitating complications of a disease should be considered not able to work, and disability should be established if the 12-month duration requirement has been, or is expected to be, met.

Response: We partially adopted the comment. There is a wide range in the nature and severity of underlying diseases that require parenteral or supplemental enteral nutrition, the type of delivery and scheduling of administration of such nutrition, and potential related complications. Many individuals who receive home parenteral or supplemental enteral nutrition have a reasonably normal lifestyle, including regular employment. Therefore, we do not think it appropriate to presume disability in all individuals who need such treatment; we must evaluate most situations on a case-by-case basis. However, we did agree that in certain instances the need for parenteral nutrition can be disabling. Therefore, we added final listings 5.07 and 105.07 for short bowel syndrome when post-operative nutritional needs cannot be met orally and an individual requires daily parenteral nutrition via a central venous catheter. We also added a criterion based on the need for daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter in final listings 5.06 and 105.06 for IBD.

As a consequence of the changes we made in response to this comment, we are also removing two of the examples of functional equivalence in § 416.926a(m). Section 416.926a(m)(3) provided for a finding of functional equivalence for children of any age who have a frequent need for a life-sustaining device, "e.g., central venous alimentation catheter." Section 416.926a(m)(10) provided for a finding of functional equivalence for children who have not attained age 3 and who have a gastrostomy. Therefore, in these final rules, we are removing functional equivalence examples (m)(3) and (m)(10) because we no longer need them, as we explained earlier in this preamble.

If we determine that the impairment does not meet or medically equal one of these listings, we will consider the need for parenteral or supplemental enteral nutrition via a gastrostomy in our residual functional capacity assessment or functional equivalence determination, especially in the kinds of situations described by the commenter. For example, the functional equivalence domain for children called "health and physical well-being" requires us to consider the cumulative physical effects of physical or mental impairments and their associated treatments or therapies on the child's functioning (see § 416.926a(l)).

Proposed 5.00F and 105.00F—What are our guidelines for evaluating specific digestive disorders? (Final 5.00D and 105.00D—How do we evaluate chronic liver disease?)

Comment: Several organizations made suggestions for specific language changes to the introductory text of the

listings (proposed 5.00 and 105.00). Many commenters asked us to expand our discussion of the signs, symptoms, and complications of chronic liver disease. They asked us to list symptoms, such as chronic fatigue, chronic indigestion, diarrhea, constipation, and sleep disturbances. Commenters also proposed that we add specific laboratory findings to the introductory text, such as decreased platelets and acid-base imbalances. They suggested that we should take into account the frequency of extrahepatic manifestations resulting from chronic liver disease and factor them into the medical evaluation.

Response: We partially adopted these comments by expanding the introductory text to provide additional adjudicative guidance on symptoms and signs of chronic liver disease. We are providing general information on symptoms and signs in final 5.00D3 and 105.00D3, and, where appropriate, specific information about symptoms and signs of particular chronic liver diseases. For example, in final 5.00D4c(ii) and 105.00D4c(ii), we provide examples of symptoms associated with the adverse effects of treatment for chronic hepatitis C virus infection, and in final 5.00D4d and 105.00D4d, we also provide examples of extrahepatic manifestations of chronic viral hepatitis by body system. We did not adopt all the specific language commenters requested because certain symptoms, such as indigestion, diarrhea, and constipation, are generally not features of chronic liver disease. However, we did include in final 5.00D3c and 105.00D3c decreased platelet count in the list of laboratory findings associated with chronic liver disease, and we indirectly referenced acid-base imbalances by adding increased ammonia levels as another laboratory finding.

Comment: One commenter suggested that we add the phrase "or the remainder of an individual's natural life" to the first sentence of proposed 5.00F2 (final 5.00D1). This sentence described chronic liver disease and explained that it persists for more than 6 months and is expected to continue for at least 12 months.

Response: We did not adopt the comment. The issue in our initial disability determinations and decisions under the listings is whether the individual has an impairment that prevents him or her from engaging in any gainful activity (or in a child, that causes "marked and severe functional limitations") and that has lasted or can be expected to last for a continuous period of 12 months or that is expected to result in death. We are required by law to reevaluate the disability status of all individuals who qualify for disability benefits and this applies even to people who have permanent impairments. Therefore, there would be no practical reason for us to add the phrase requested by the commenter.

Comment: One commenter recommended that we delete the word "function" in proposed 5.00F2d and 105.00F2e when referring to liver tests because liver enzymes are not liver function tests.

Response: We adopted the comment in final 5.00D3c and 105.00D3c.

Comment: One commenter suggested we delete the word "minimal" when referring to ascites in proposed 5.00F2(d) and 105.00F2(e) (final 5.00D6 and 105.00D6) and that we change it to "small volume." The commenter also suggested that we delete "and not on physical examination" in this same section to more clearly indicate that we are referring to incidental and clinically insignificant findings of ascites found on imaging studies alone.

Another commenter indicated that ascites should be evident on physical examination and not identified solely by an imaging procedure that might show clinically insignificant findings of ascites. This commenter also suggested listing criteria based on intractable ascites, documented on physical examination as moderate to severe, or hydrothorax, poorly controlled by or unresponsive to diuretic treatment, or requiring paracenteses for control.

Response: We agree with the commenters that current imaging techniques are capable of detecting even minimal amounts of ascites before detection may be possible on physical examination. However, the criteria of proposed listings 5.05B2 and 105.05B2 did not base severity solely on the presence of ascites detected by physical examination or by imaging studies; nor do these final listings. To meet the severity requirement, the laboratory findings in final 5.05B2 and 105.05B2 must also be present. If the laboratory findings are at the level specified in the listing, it is not necessary to quantify the ascites because there will be sufficient information to show that the individual is disabled. Therefore, we did not adopt the comment to change the quantifier from "minimal" to "small volume" ascites; instead, we removed it.

We adopted the second commenter's suggestion to include criteria in final listing 5.05B and 105.05B for hydrothorax because ascitic fluid can collect in the chest cavity and result in a very serious impairment. We did not adopt the other recommendation that we characterize listing-level ascites as "moderate to severe," because these terms are subject to varying interpretations and their use would not promote consistent adjudication.

Comment: One commenter suggested that we provide detailed information about a number of extrahepatic manifestations and complications of chronic liver disease and suggested additional language for proposed 5.00F (final 5.00D).

Response: Based on this and other comments, we added language in final 5.00D7 through D11 and the corresponding paragraphs in 105.00. These sections provide guidance relevant to the application of the new listings we are adding for complications of chronic liver disease; that is, final listings 5.05C through G and 105.05C through H. We also provide information on extrahepatic manifestations of hepatitis B and C in final 5.05D4d and 105.05D4d. The additional information we provide is relevant only to application of the listings, and therefore, does not include the amount of detail this commenter suggested.

Comment: Several commenters requested that we provide a listing for individuals placed on a liver transplant list. They submitted proposals for the introductory text to explain this suggested listing.

Response: We did not adopt the suggestion of placement on a liver transplant list alone as a listing because the threshold criteria for placement on a transplant list vary widely throughout the country and because individuals may be placed on a list well before they have listing-level impairments. However, based on this and other comments we added final listings 5.05G and 105.05G for end stage liver disease documented by particular scores determined using the SSA Chronic Liver Disease (SSA CLD) calculation and SSA Chronic Liver Disease-Pediatric (SSA CLD–P) calculation. We based these calculations on the Model for End Stage Liver Disease and the Pediatric End Stage Liver Disease (MELD and PELD) scales that were developed by the United Network of Organ Sharing for prioritizing patients waiting for liver transplants based on statistical formulas for predicting mortality from liver disease.

Comment: One commenter noted that liver patients regularly have laboratory studies to track their liver function. Any decline in function is evident almost immediately and these laboratory studies are often done bi-weekly, or weekly in some cases. The commenter said that we should be able to use the laboratory findings rather than wait until a patient's condition declines to

the point that he or she needs a liver transplant.

Response: We partially adopted the comment. Although we have indicated that laboratory studies may not be a good indicator of disability, since there may be a poor correlation between the studies and the severity of liver disease, we believe that some laboratory findings can be indicative of listing-level severity for certain disorders, such as spontaneous bacterial peritonitis (final listings 5.05C and 105.05C), hepatorenal syndrome (final listings 5.05D and 105.05D), hepatopulmonary syndrome (final listings 5.05E and 105.05E), and end stage liver disease (final listings 5.05G and 105.05G).

Final Listing 5.02—Gastrointestinal Hemorrhage From Any Cause, Requiring Blood Transfusion

Comment: Proposed listing 5.02 specified that at least 2 units of blood must be transfused per episode. One commenter expressed concern that different physicians and different religious preferences can dictate when and how much blood is transfused. The commenter said that it appeared more reasonable to use hematocrit levels, which are standardized, instead of a more subjective and less standardized method based on the number of units transfused.

Response: We did not adopt the comment to use a hematocrit level in this listing because it takes time for the hematocrit to equilibrate following rapid blood loss. We also did not adopt the comment to remove the 2-unit requirement for the amount of blood transfused per episode in final listing 5.02. As we explained earlier, we chose 2 units of blood because this is the minimum amount of blood that is usually transfused.

We recognize that there are individuals who may object to transfusions. In such cases, their impairments cannot meet the requirements of any listing that includes a criterion for a transfusion. However, it is certainly possible for a person who refuses transfusions to be found disabled under our other rules for determining disability.

Comment: One commenter noted that in proposed listing 5.02 we stated that all incidents within a consecutive 14-day period constitute one episode, but in proposed 5.00C2 we also stated that there must be at least 1 month between events (incidents). The commenter asked us to clarify these requirements because it seemed that all events within a 30-day period should constitute one episode.

Response: We clarified the requirements by deleting the sentence in proposed listing 5.02 that referred to episodes within a 14-day period because it could have been confusing and was not necessary for correctly applying the listing. Although our intent was to explain that several bleeds may occur during a single episode, listing-level severity is based on hemorrhages that require transfusions and not the actual number of bleeds per episode. We require 30 days between hemorrhages that require transfusion in order to establish that there are separate events and that the condition is chronic.

Final Listings 5.05 and 105.05—Chronic Liver Disease

Comment: One commenter recommended that we place the study "endoscopy" before "x-ray" in listing 5.05A because 95 percent of diagnoses for varices are made by endoscopy.

Response: We adopted the comment.

Comment: We received many comments asking us to change the headings of listings 5.05 and 105.05. Commenters suggested eliminating the words "and cirrhosis of any kind," stating that "cirrhosis" is chronic liver disease. Commenters also pointed out that individuals may have chronic liver disease but not necessarily cirrhosis.

Response: We adopted the comments and removed the reference to "cirrhosis" from the headings of the two listings.

Comment: One commenter stated that the definition of cirrhosis can be subjective. The commenter said that one doctor who reads a tissue sample may diagnose fibrosis and another doctor may diagnosis cirrhosis. This commenter stated he had had debilitating symptoms before he officially had cirrhosis.

Response: We do not agree that the definition of cirrhosis is subjective. Cirrhosis is a disorder defined by pathology. Fibrosis is an early form of scarring. Cirrhosis is late-stage disease and readily distinguishable by pathologists from fibrosis. We do agree, however, that individuals can have debilitating problems from chronic liver disease before they develop cirrhosis. As we have noted in a number of places throughout this preamble, we have expanded and clarified the final rules to ensure that we identify people without cirrhosis who should qualify under these final listings.

Comment: Many commenters noted that the proposed changes for chronic liver disease contained fewer criteria (physical examination, laboratory, or imaging tests) to establish disability than did the prior listings. They expressed concern about "compressing" prior listings 5.05 B, C, D, E, and F into proposed listing 5.05B, which contained only two sets of severity criteria. Some commenters said that the proposed listings were vague and too narrow in scope. Commenters believed that this would make our determinations more restrictive and perhaps erroneous. They urged us to expand the medical evaluation criteria to more accurately reflect the pathophysiology of chronic liver disease. The commenters believed that the listings should be more specific and inclusive with regard to signs, symptoms, complications, treatment, and metabolic and functional factors to make the evaluation of chronic liver disease more on par with HIV criteria because hepatitis C is a systemic illness that encompasses a broad spectrum of diseases similar to HIV infection.

Response: We adopted many of these comments. We significantly expanded the listing criteria for chronic liver disease. For example, we expanded proposed listings 5.05A and 105.05A to include hemorrhaging from gastric or ectopic varices and portal hypertensive gastropathy. We also expanded proposed listings 5.05B and 105.05B to include hydrothorax as well as ascites. We added four listings in parts A and B based on suggestions from commenters: Final listings 5.05C, D, E, and G, and 105.05C, D, E, and G. We also replaced the prior reference listing for hepatic encephalopathy with a stand-alone listing for this complication of chronic liver disease (final listings 5.05F and 105.05F).

Analogous to the detailed guidance we provide about HIV infection in 14.00D and 114.00D of our listings, we have greatly expanded the introductory text to include detailed information on chronic viral hepatitis infections in final 5.00D4 and 105.00D4. We provide information about the symptoms, signs, and complications of chronic hepatitis B and C virus, and include information about the types of treatment for these infections and the common adverse effects of this treatment. We have also added information on extrahepatic manifestations of hepatitis B and C virus by body systems.

We did not add all of the suggested complications or extrahepatic manifestations of chronic liver disease because most respond to prescribed treatment and they are generally very rare. Also, some of the suggested extrahepatic syndromes are multi-causal, may be unrelated to the liver disease, and poorly correlate with the degree of liver destruction. Very serious extrahepatic manifestations that we did not list in these final rules can be

evaluated under the affected body system. Lesser manifestations are evaluated in the residual functional capacity assessments or functional equivalence evaluations later in the appropriate sequential evaluation process for adults or children. (We describe the sequential evaluation process later in this preamble.)

Comment: Several commenters suggested we include a classification system, such as the Child-Turcotte-Pugh score, which has a refined scoring system and has been validated for years as predictive of mortality. This score indicates cirrhosis as "compensated" and "decompensated."

Another commenter suggested that we should not use the Child-Turcotte-Pugh score because it does not pick up some disabilities, but we should use the MELD and PELD scoring systems which have replaced it.

Response: We partially adopted the suggestion to use a classification system by including an SSA CLD score criterion in final listing 5.05G, and SSA CLD and SSCLD–P score criteria in final listings 105.05G1 and G2. The SSA CLD and SSA CLD–P calculations are based on the calculations for the MELD and PELD scores, but we made minor changes to these calculations to make them more appropriate for determining disability. We did not base the SSA CLD–P calculation on the Child-Turcotte-Pugh score because it has been superseded by the PELD in clinical practice.

Comment: Several commenters were concerned about our proposal to remove prior listing 5.05B, for performance of a shunt operation for esophageal varices.

One commenter noted there are still problems that can occur with the TIPS shunting procedure, such as occlusion, infection, or failure. The commenter noted that TIPS shunting does not have any bearing on the severity of the condition that required the shunt. The commenter also indicated that, although the shunt will help relieve the pressure causing the hemorrhage, it does not bring about a recovery or improvement of the liver disease itself.

The same commenter stated that, after a TIPS procedure, the blood is not being filtered by the liver, but is bypassing liver function, and that blood toxicity is an issue. The commenter noted that TIPS prevents or postpones the next big bleed, but does not cure the underlying disease, usually cirrhosis. The debilitating symptoms are not eliminated and the patient is unable to perform work or normal lifestyle functions.

Response: We did not adopt the comments asking us to keep prior listing 5.05B. As we indicated in the preamble to the NPRM, more modern types of procedures, such as TIPS, are less risky and can be performed before the condition becomes serious enough to meet the level of severity required by our listings. Therefore, we cannot presume that everyone who has had a TIPS procedure is disabled. However, we will evaluate the severity of the underlying chronic liver disease under final listing 5.05, and if it does not satisfy the requirements of the listing, we will evaluate the effects of any debilitating symptoms when we assess residual functional capacity at later steps in the sequential evaluation process.

We do agree that complications of TIPS may occur. However, if there are complications, immediate medical attention would be required, and the complications would not last or be expected to last for 12 months.

We do not agree with the comment that blood is not being filtered by the liver after a TIPS procedure. Portal pressure is reduced by the TIPS procedure, which connects the portal vein to the hepatic vein using a stent (shunt); however, there is still some blood that filters through the liver.

Comment: Many commenters disagreed with our proposal to remove prior listings 5.05E and 105.05E for hepatic encephalopathy. They noted that this condition is directly related to end stage liver disease and affects an individual's ability to work due to manifestations such as confusion, poor memory, and lack of concentration. Many commenters also recommended that we include criteria for evaluating hepatic encephalopathy in the digestive disorders listings rather than evaluating the condition in the mental or neurological body systems. Another commenter noted that TIPS can cause encephalopathy, and said that doing away with listings for shunts and hepatic encephalopathy was not a good idea.

Response: We adopted the comments. Although we are still removing prior listings 5.05E and 105.05E because they were reference listings that only referred to the mental disorders listings, we are adding new listings for hepatic encephalopathy that contain specific evaluation criteria, final listings 5.05F and 105.05F. These final listings include criteria for the behavioral or cognitive manifestations of hepatic encephalopathy in combination with TIPS or any surgical portosystemic shunt or in combination with a specific clinical or laboratory finding. We are also providing guidance in final 5.00D10 and 105.00D10 of the introductory text for using the new listings.

Comment: We received many comments regarding the use of liver biopsies in the evaluation of chronic liver disease. Commenters stated that individuals with chronic liver disease may suffer from a multitude of symptoms and have little evidence of injury to their liver, while others may have few symptoms, even with extensive cell damage on liver biopsy. Therefore, histological findings may not correlate with functional capacity. Others noted that extrahepatic manifestations of chronic liver disease cannot be found on liver biopsy, yet these manifestations are symptomatic and limiting.

Also, in an apparent reference to our proposal to remove the requirement for confirmation of chronic liver disease by liver biopsy in prior listing 5.05F, commenters agreed that a biopsy should not be mandatory. However, they indicated that the results of a biopsy could help to assess whether an individual has cirrhosis, particularly early cirrhosis, since symptoms may not be substantiated by blood tests or physical examination.

Response: We agree with the commenters that a liver biopsy is useful in diagnosing cirrhosis, and in final 5.00D3c and 105.00D3c, we explain that biopsy may demonstrate the degree of liver cell necrosis, inflammation, fibrosis, and cirrhosis. We also agree with the commenters that a liver biopsy is not a good predictor of the severity of symptoms of chronic liver disease or their effect on functioning. Therefore, as we explained earlier, we have removed prior listing 5.05F, which was based in part on confirmation of chronic liver disease by liver biopsy. We will continue to consider liver biopsy reports when they are part of the existing medical records in combination with all the other evidence in the case record.

Comment: Several commenters stated that many of the medications and procedures used to treat the symptoms of liver disease, such as higher dose diuretics, repeated large-volume paracenteses, and placement of TIPS for bleeding esophageal varices, have side effects that we should consider. The commenters noted that treatment can lead to major electrolyte or renal problems.

Response: We agree that the effects of treatment must be considered in assessing digestive impairments. In final 5.00C and 105.00C, we provide general guidance for how we consider the effects of treatment for all impairments in this body system. In final 5.00D4 and 105.00D4, we provide specific guidance

about how we consider the effects of treatment for chronic viral hepatitis infections.

Also, if an impairment does not meet or medically equal a listing, we continue to consider the effects of treatment on the individual's ability to function when we assess residual functional capacity, or for children, when we assess functional equivalence.

Comment: Several commenters suggested that we add documented portal hypertension to listing 5.05A and 105.05A.

Response: We adopted the comment.

Comment: One commenter suggested that proposed listing 105.05A was more restrictive than proposed listing 5.02 for adults, with no corresponding childhood listing 105.02 for children. The commenter suggested that we include a comparable listing for children based on three gastrointestinal bleeds requiring transfusion in a 6-month period due to any disease process, not just esophageal varices.

Response: We adopted the comment and added a corresponding childhood listing 105.02 with essentially the same provisions as in final listing 5.02.

Comment: Many commenters recommended that we delete the word "massive" from proposed listings 5.05A and 105.05A. They also suggested including other sites of bleeding besides the esophagus under listing 5.05A, specifically bleeding from gastric and ectopic varices, and portal hypertensive gastropathy.

Response: We adopted the comments and made corresponding changes to final 5.00D5 and 105.00D5 of the introductory text which provide guidance for applying listings 5.05A and 105.05A. We also changed the proposed criteria of these listings, as we explain in our response to the next comment.

Comment: Many commenters opposed the requirement in proposed listing 5.05A that an individual receive 5 units of blood in order for his or her impairment to meet the requirement for a massive hemorrhage.

One commenter stated that it would be more reasonable to simply require a "significant hemorrhage." This commenter noted that any transfusion is significant.

Another commenter said that specifying the number of units transfused could not be supported because the size of the individual, the protocol of the hospital, the timeliness of the intervention, and other factors could influence the amount of blood transfused. This commenter doubted that the prognosis for an individual with bleeding varices who receives 4 units is significantly better than for an individual who receives 5 units. The commenter thought that, since physicians and hospitals are reluctant to transfuse blood, any blood transfusion should suffice or the matter should at least be left to medical judgment.

Another commenter said that a transfusion of "multiple" units of blood in conjunction with other interventions in an attempt to restore hemodynamic stability should suffice and that there should be some latitude for medical judgment in this listing.

Another commenter stated that we should include other criteria to define a hemodynamically significant bleed, such as at least a 2-unit bleed, or a drop in blood pressure and increase in pulse rate. This commenter also suggested changing the wording from "hemodynamic instability" to "hemodynamically significant bleed" in the listing and the introductory text.

Response: We partially adopted the comments. We agree that the proposed rule was too severe. Therefore, we revised the listing so that the primary criterion for listing-level severity is hemorrhaging that results in hemodynamic instability and requires hospitalization for transfusion. Since the minimum amount of blood a physician will usually transfuse in adults is 2 units, we used this amount in the listing.

In final 5.00D5, we also adopted some of the language suggested by commenters to describe hemodynamic instability, including pallor, diaphoresis, rapid pulse, low blood pressure, postural hypotension, and syncope. (We also provide brief definitions of the more technical medical terms on this list.) We do not indicate, as we did in the NPRM, that hemodynamic instability may require multiple transfusions because final listing 5.05A requires only one transfusion.

We made similar changes in the part B section for children, but provided a rule for documenting appropriate transfusion volumes based on body weight.

Comment: One commenter noted that some people could not meet listing 5.05A because they may have many large varices clipped. These individuals would be in serious danger and disabled without ever bleeding.

Response: We agree that an individual who has had prophylactic banding of varices without a bleed would not meet the requirements of final listing 5.05A. However, one of the major complications of cirrhosis with portal hypertension is bleeding varices; therefore, a criterion for hemorrhaging is appropriate in these listings. An impairment that does not meet the requirements of 5.05A because varices have been clipped may still meet the requirements of final listing 5.05B through 5.05G or be disabling on another basis.

Comment: One commenter stated that the mortality rate associated with variceal bleeding has decreased over the last several years with advances in therapy. If an individual goes more than a year without recurrent bleeding, he or she is back at baseline and has only a 25 percent risk for bleeding. The commenter recommended that we determine disability at that point by the state of decompensation of the liver rather than the risk of bleeding.

Response: All of the criteria in final listings 5.05 and 105.05 are based on the state of decompensation of the liver rather than the risk of bleeding. The requirement under 5.05A for hemorrhaging that results in hospitalization and transfusion reflects one of the major complications of chronic liver disease. When we determine whether an impairment that met 5.05A continues to be disabling following the 1-year period of disability, we evaluate any residual impairment(s), including bleeding and other complications of chronic liver disease.

Comment: One commenter stated that the proposed language for the length of disability under listings 5.05A and 105.05A (that is, "for 1 year following the last documented massive hemorrhage") did not work. The commenter suggested that the correct standard has to be the state of decompensation of the liver, not a fixed period of time.

Response: We did not adopt the comment. As we explained in the NPRM, we changed the period for which we would presume the impairment is disabling from 3 years to 1 year because of newer techniques in the treatment of esophageal varices. (See 66 FR at 57013.) The same logic would hold for other bleeds as well.

Also, it is important to remember that the 1-year rule does not mean that disability automatically ends 1 year following the last documented transfusion (we removed the description "massive hemorrhage" as we explained earlier). Our rule is only that after 1 year we must consider whether the impairment is still disabling. Also, our existing rules allow our adjudicators to decide that we will not review a case until a date later than 1 year after the qualifying event (in this case, the last documented transfusion), if the medical evidence supports a conclusion that the disability will continue for longer than 1 year.

Comment: One commenter objected to the criterion in proposed listing 5.05B2a for a cutoff level for serum albumin depletion, stating that the actual serum albumin level is dependent upon many factors, such as hydration and the degree of portal hypertension. The commenter suggested that we change the listing criterion to "an associated decrease in serum albumin."

Response: We did not adopt the comment. A serum albumin level of 3.5 g/dL is normal. Even though a level between 3.0 g/dL and 3.5 g/dL may indicate an abnormality, it is does not reflect listing-level severity. A level of 3.0 g/dL or less is recognized by hepatologists as indicative of loss of liver biosynthesis.

We set the laboratory values in these listings, such as the serum albumin level in 5.05B2a, at a level that reflects very serious impairment because we use the listings only to deem individuals disabled without considering any other factors that may contribute to their inability to work; that is, their residual functional capacity, age, education, and work experience. However, the establishment of these levels does not mean that individuals whose impairments do not satisfy the criteria of the listing are not disabled; it only means that we do not presume that they are disabled under the listing. We may still find that the impairment is disabling based on an individualized assessment of its effects on the individual's functioning.

Comment: One commenter suggested that we include a criterion for malabsorption with involuntary weight loss of 10 percent or more from baseline in the absence of a comorbid condition that could explain the findings.

Response: We did not adopt the comment because malabsorption is not a common feature of chronic liver disease. However, individuals with chronic liver disease and the appropriate degree of weight loss can meet the requirements of final listings 5.08 or 105.08.

Comment: Several commenters suggested that we change the measure of coagulation studies from prothrombin time to International Normalized Ratio (INR) as many laboratories do not report the prothrombin time in terms of seconds, but do report the INR.

Response: We adopted the comment.

Comment: Several commenters suggested that we include hepatic malignancy as a criterion in listings 5.05 and 105.05, noting that many liver diseases result in hepatocellular carcinoma.

Response: We did not adopt the comment because we already have listings for malignant tumors of the liver, listing 13.19 for adults and listing 113.03 for children. However, in response to this comment, we added a cross-reference to listing 13.19 in final section 5.00D1 and to listing 113.03 in final section 105.00D1.

Comment: Several commenters stated that some hepatic conditions, such as Budd-Chiari syndrome, may not include cirrhosis or ascites, but are disabling and should be included as conditions for determining eligibility for disability benefits.

Response: We did not add all the specific conditions mentioned by the commenters to the listings. However, as already explained, we did add several criteria to final listing 5.05 and 105.05 to expand the scope of those listings and to address additional manifestations of chronic liver disease. We also expanded the introductory text in 5.00D2 and 105.00D2 to provide examples of chronic liver disease that should be considered under the listings when they result in the complications specified in the listings. We added guidance regarding the effects of the extrahepatic manifestations of chronic liver disease that should be considered under the requirements of other body systems or at later steps in the sequential evaluation process when the impairment does not meet or medically equal a listing in the digestive disorders body system.

Comment: One commenter noted that we proposed to remove the laboratory values from prior listings 5.05C and 5.05F and asked why we did not propose to delete the laboratory values in proposed listing 5.05B. The commenter recommended that we delete the values from listing 5.05B as well.

Response: We did not adopt the comment. As we explained in the NPRM (66 FR at 57013) and have explained earlier in this preamble, we did not propose to delete the laboratory values in proposed listing 5.05B because they are specific indicators of the severity of the deterioration of liver function in that listing. Serum albumin level is a good indicator of liver biosynthesis and it correlates with the severity of ascites. In addition, blood coagulation disorders resulting from chronic liver disease are indicative of the severity of the liver dysfunction. However, as we explained earlier in this preamble, we are providing a criterion for an elevated INR as a measure of the body's ability to regulate coagulation, rather than a prolongation of prothrombin time as in the prior and proposed listing, because INR is a more widely used study than prothrombin time.

Comment: Another commenter believed that our proposal to eliminate prior listing 5.05C, which required chronic liver disease with elevated serum total bilirubin, would be a "great disservice" to individuals with primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), and autoimmune hepatitis (AIH). The commenter noted that elevated serum total bilirubin levels and pruritis associated with these conditions are very real problems. Also, a commenter noted that most primary care doctors are not going to run studies other than the serum total bilirubin.

Response: Even though serum total bilirubin studies may be readily available in the medical records from primary care physicians, we are removing prior listing 5.05C because, as we explained earlier, this laboratory finding alone is not a good indicator of impairment severity or an individual's ability to function. However, serum total bilirubin is one of the three laboratory values we use to calculate the SSA CLD score for final listing 5.05G.

In response to this comment, we are providing a list of examples of chronic liver disease in final 5.00D2. The list includes PBC, PSC, and AIH, and will remind adjudicators that these conditions can be evaluated under final listing 5.05.

Comment: One commenter stated that doctors are finding that low platelet counts are an indicator of portal hypertension and that they should be added to the criteria for listings 5.05 and 105.05. The commenter noted that patients are concerned about the amount of physical activities they can perform with low platelet counts and abnormal coagulation.

Response: We do not include low platelet counts as stand-alone criteria for listing-level severity because there is a wide statistical variation in platelet counts, and there is no specific level at which individuals will subsequently bleed. We consider any functional consequences, such as limitations in an individual's ability to perform physical activity, when we assess residual functional capacity in adults and functional equivalence in children.

However, in response to this comment, we added a reference to abnormal coagulation studies, including an increased INR level and decreased platelet counts, in our list of laboratory studies associated with chronic liver disease in final 5.00D3c and 105.00D3c. We explain that elevated INR level does indicate loss of synthetic liver function, as well as increased likelihood of cirrhosis and associated complications. We also include an elevated INR level

in the criteria of listings 5.05B and 105.05B.

Comment: Proposed listings 5.05B and 5.06 contained criteria that required specific findings to occur during a consecutive 6-month period. Commenters believed that our proposal to change the requirement that ascites persist for 5 months in prior listing 5.05D to a requirement for 6 months in proposed listing 5.05B seemed arbitrary and unfair because not all impairments fit neatly into 6-month blocks. (There was no 6-month requirement in prior listing 5.06.) The commenters believed that we changed the listing simply to coincide with an arbitrary timeframe without regard for long-held understanding of medical severity. One commenter believed that the period was excessive because clinically significant ascites for 3 months despite treatment represents serious liver disease.

Another commenter questioned how we would handle cases in which the appropriate findings persist consecutively over a 2- to 5-month period, improve for a few months, and then recur for a few months. The commenter asked if a case involving multiple recurring periods, none of which individually lasts up to 6 consecutive months, could equal either of these listings.

Response: As we explained in the NPRM, "[i]n our experience, requiring 6 months of persistent findings enables us to make a more reliable prediction of listing-level severity." (See 66 FR at 57013.) Requiring findings from at least two evaluations, at least 60 days apart, within a consecutive 6-month period allows us to document the recurrent or persistent nature of many of these impairments and is a more reliable indicator that the impairment will be disabling for 12 consecutive months. When these listing requirements are satisfied, we can generally conclude that the impairment will be disabling for 12 consecutive months.

In the two examples provided by the commenters (that is, clinically significant ascites for 3 months despite treatment, or findings persisting for 2 to 5 months that improved for a few months and then recurred), the impairments would meet the listing if there was evidence showing the required findings on two evaluations spaced at least 60 days apart. These examples show that we do not necessarily need 6 months of evidence to find that an impairment meets the listing. Also, as we have already noted, if the impairment does not meet the criteria of any of these final listings, it may meet the criteria of a listing in another body system, medically equal a listing, or meet the definition of disability later in the sequential evaluation process.

Comment: One commenter believed that we should not require documentation of ascites by both physical examination and appropriate medically acceptable imaging under proposed listings 5.05B2 and 105.05B2. The commenter stated that imaging studies are not always available and that, if ascites is observable on examination and the serum albumin or coagulation studies criterion in the listing is fulfilled, it seems unnecessary to also require documentation by imaging. Another commenter noted that it is difficult to demonstrate ascites in obese people by physical examination, and requiring both types of documentation could reduce the chance that an individual who is obese would benefit from this listing.

Another commenter stated that our proposed listing 5.05B criteria did not quantify the amount of ascites and that we should be evaluating significant ascites.

Response: We adopted the first two comments by providing in final listing 5.05B2 that ascites or hydrothorax can be demonstrated by appropriate medically acceptable imaging "or" by physical examination. Since the required laboratory findings in final listings 5.05B2 establish the severity of the impairment under the listings, we agree that there is no need to require documentation of ascites both on physical examination and on imaging. Because of this change in the final rules, individuals with obesity will be able to meet this listing with ascites demonstrated on imaging techniques alone, provided they meet the other criteria of the listing.

Because of this comment, we also reviewed the same criterion in proposed listing 105.05. For consistency, and because it is medically appropriate, we included the same requirements for children in final listing 105.05B as we do for adults in final listing 5.05B. We also restored the criterion from prior listing 105.05B for an associated serum albumin of 3.0 g/dL or less and added a criterion for an INR of 1.5 consistent with final listing 5.05B. This will ensure that the ascites is a sign of chronic liver disease.

Because we are requiring the associated laboratory studies with the ascites to demonstrate listing-level severity, we will not need to quantify the amount of ascites.

Comment: One commenter recommended that we not delete listing 105.05A, inoperable biliary atresia, and require children to prove disability in other ways.

Response: We adopted the comment. In final listing 105.05H, we have clarified that the listing applies only to extrahepatic biliary atresia, thus excluding other types, such as intrahepatic biliary atresia. We are no longer using "inoperable" to describe the condition, because by definition, extrahepatic biliary atresia cannot be remedied with surgery except by liver transplantation; the portoenterostomy procedure usually performed in the first 3 months of life is only palliative.

Comment: One commenter believed that our requirement for prolongation of the prothrombin time of at least 2 seconds in proposed listing 5.05B2(b) was medically unreasonable and might be excessive. The commenter suggested that any reading above the normal value for the reporting laboratory should qualify.

Response: We disagree with the comment; however, we have removed the proposed criterion for measurement of prothrombin time and instead provided a criterion for INR in final listing 5.05B2 because INR is a more widely used study than prothrombin time. As we explained earlier, because we use the listings to deem individuals disabled, we must set laboratory values in the listings at levels that reflect very serious impairment.

Comment: One commenter suggested that we include in listing 105.05 consideration of poor school performance, difficulties in play, and growth and developmental delays. The commenter gave examples of developmental delays due to ascites, such as inability to roll over.

Response: We did not include this information in the listing, but in response to this comment we did note in final 105.00D3 in the introductory text that the manifestations of chronic liver disease may include developmental delays or poor school performance. The issues raised by this comment are more appropriately addressed when we make functional equivalence determinations under § 416.926a, where we provide detailed, age-specific guidelines for evaluating limitations in school, play, and various other developmental issues.

Comment: Many commenters stated that we should include a separate listing for chronic hepatitis B and C. Some suggested that we do not recognize the hepatitis C virus as a disability and they believed that it is "unacceptable" to evaluate individuals with chronic hepatitis C virus under the chronic liver disease listings. Some commenters thought that our proposals would

restrict individuals with hepatitis C from receiving benefits. One commenter said that our proposed changes did not take into account knowledge gained in the last 20 years regarding the hepatitis C virus. Some commenters thought we were removing hepatitis C and all liver diseases from the listings, while others suggested that we wrote the chronic liver disease listings only for alcoholic and drug-induced liver failure.

Response: We are not removing chronic liver disease from the listings, and we do recognize and include hepatitis C, which is a chronic liver disease, under final listings 5.05 and 105.05.

We believe that the many changes and improvements we are making in the final listings and the introductory text in response to these and other comments will make clear that final listings 5.05 and 105.05 apply to all forms of chronic liver disease, including disease caused by the hepatitis B and C viruses. As we have already explained, final listings 5.05 and 105.05 are now broader in scope and more inclusive than the proposed listings were. We did not add a separate listing for chronic hepatitis B or C because individuals with listing-level effects of hepatitis will have the same kinds of findings as those associated with other chronic liver diseases.

In response to these and other comments about chronic viral hepatitis, we are also adding extensive sections to the introductory text to address many of the concerns expressed in the comment letters and at the outreach conference. Final 5.00D4 and 105.00D4, which explain how we evaluate chronic viral hepatitis, are the longest sections in the introductory text. We have provided subsections explaining:

- The nature and course of hepatitis B and C infections;
- Treatment, including the adverse effects of treatment; and
- Extrahepatic manifestations of hepatitis B and C.

With these changes, we believe it will now be very clear that we do consider hepatitis B and C to be medically determinable impairments that could be the basis for a finding of disability. We explain how these impairments can meet the requirements of final listings 5.05 and 105.05, and how they can be disabling in other ways, either by meeting other listings, medically equaling listings, or based on the functional consequences of the impairments as a result of symptoms and the effects of treatment. It should also be clear that we do not intend to restrict the entitlement to disability benefits of individuals who have hepatitis B or C; rather, we intend to include everyone who should qualify under our rules. The new information in final 5.00D4 and 105.00D4 will also ensure that our adjudicators have up-to-date information about hepatitis B and C.

Comment: Some commenters indicated that the debilitating symptoms of hepatitis C virus often begin decades before end-stage liver failure occurs. Some commenters recommended that we include criteria for hepatitis like the criteria in listings 14.08N and 114.08O, for human immunodeficiency virus (HIV). Those listings provide for a finding of disability based on significant documented symptoms or signs with specified functional limitations. The commenters indicated that the symptoms and signs of hepatitis, such as decreased cognitive function, decreased memory acuity, fatigue, weakness, fever, malaise, lethargy, weight loss, abdominal pain, appetite disturbance, mood disturbance, and insomnia, are in many respects the same as the symptoms and signs we include in listings 14.08N and 114.08O. The commenters noted that both HIV and chronic hepatitis B and C are systemic illnesses that encompass a broad spectrum of diseases and potential impairments with many constitutional and systemic signs and symptoms.

One commenter stated that including a listing based on functional limitations would be important for individuals who are homeless and whose functional disabilities may be very profound. The commenter noted that it would be easier to document the functional limitations than the medical conditions because expert medical care may not be available to this group.

A group of physicians who spoke at the outreach meeting commented that they "struggled with the dilemma of" how we should evaluate fatigue because they believe it is subjective and difficult to assess and validate. They recommended that the assessment of the validity and impact of fatigue should rest on the judgment of the treating source.

Response: We did not adopt the comments. While we agree that some individuals with hepatitis B and C may be debilitated by symptoms of fatigue and the other symptoms mentioned by the commenters, we believe it would be more appropriate to consider these symptoms on a case-by-case basis at later steps of the sequential evaluation process, based on information obtained from the treating source(s) as well as other medical and non-medical sources concerning the particular effects of the impairments on residual functional capacity or, for children, age-appropriate functioning.

Also, we do not believe we should add a functional listing to the final rules without first proposing it and asking for public comment on the criteria it might contain. Therefore, even though we are not adding such a listing now, we plan to issue an Advance Notice of Proposed Rulemaking inviting public comments on whether we should add a functional listing to the digestive disorders body system and, if so, what functional criteria would be appropriate.

With regard to the comment that we should add a listing based on functional limitations for individuals who are homeless, we do not believe we should add a listing at this time for the reasons stated above; however, we do evaluate functional limitations that result from the symptoms and signs of an impairment when we assess residual functional capacity.

We agree with the physicians who spoke at the outreach meeting that the fatigue associated with hepatitis B and C is often substantial but also difficult to assess and validate. We also agree that treating physicians can provide important information about the validity and impact of fatigue on functioning. In fact, our regulations at §§ 404.1527 and 416.927 require us to consider medical source opinions about the nature and severity of impairments, including opinions about symptoms and their effects on functioning. However, these same rules do not allow us to rely solely on the judgment of the treating physician, as the commenters may have been suggesting. The rules identify factors we must consider in determining whether to accept a treating source's medical opinion, including an opinion about an individual's symptoms. We must also evaluate the symptom of fatigue under §§ 404.1529 and 416.929 of our regulations, which provide a variety of factors that we must consider.

Comment: One commenter suggested that hepatitis C should be included in the hematological body system (7.00 and 107.00) since it is a blood-borne virus.

Response: We did not adopt the comment because hepatitis is primarily a liver disorder and should be evaluated in the digestive disorders body system.

Comment: One commenter stated that only those individuals who suffer from hepatitis C know the extent of their symptoms and only they should make judgments about the appropriate disability criteria for this disease.

Another commenter recommended that we employ doctors who deal with a large number of patients with hepatitis. The commenter further

recommended that we consult with the American Association for the Study of Liver Disease (AASLD) for a list of experts in the field. Another commenter indicated that some doctors who do not deal regularly with an indigent population or those that have retired from active practice may not have expertise in assessing hepatitis B and C. The commenter recommended that community health centers or other public entities should be used as a source of medical expertise.

Response: As we note at the beginning of the comment and response section of this preamble, we reopened the comment period on the NPRM so that we could receive additional input on our rules for evaluating chronic liver disease. In addition to the outreach meeting we conducted in Cambridge, Massachusetts in November of 2004, at which a number of experts presented, we also asked other people with expertise to send us written comments. As a result of these efforts, we received many comments from medical specialists, advocates who specialize in chronic liver disease (including hepatitis B and C), and patients. We adopted many of the comments from these individuals.

We generally agree with the commenters who indicated that it would be better if we used doctors in our program who have expertise in evaluating and treating individuals with hepatitis, or any chronic liver diseases, and we do use such experts whenever possible. We also asked the Institute of Medicine of the National Academies to study the issue of medical expertise in our disability evaluations and to recommend ways in which we can make better use of medical expertise in our case adjudications. They issued their report, *Improving the Social Security Disability Decision Process,* on February 13, 2007.[2] We are now considering their findings and recommendations for future improvements.

Comment: One commenter said that a Veterans Administration (VA) disability rating of 100 percent due to hepatitis C should trigger automatic payment of Social Security disability benefits, as it does for disabled railroad employees. The commenter stated that this would save tax dollars and eliminate inequity between the two Federal programs.

Response: We did not adopt the comment. Under sections 205(b)(1) and 1631(c)(1)(A) of the Act and §§ 404.1504 and 416.904 of our regulations, we are required to make a determination of disability independent of other agencies, such as the VA. Also, the disability standard the VA uses is not the same as our disability standard. However, our regulations do provide that we must consider determinations made by other agencies, including the VA, when we make our determinations and decisions (see §§ 404.1504, 404.1512(b)(5), 416.904, and 416.912(b)(5)).

The reason that a decision awarding disability benefits for the Railroad Retirement Board sometimes applies to Social Security disability benefits is that there is a law that permits this presumption. Also, the determinations of disability that we accept use the same standard that we use for determining disability under our programs; in some cases, we make the determination of disability that the Railroad Retirement Board uses.

Comment: One commenter suggested that hepatitis C should be a category for SSA disability at the point of diagnosis, stating that genotyping and treatment costs are prohibitive. This commenter stated that there was no help for those in the interim between contracting the disease and being near death under the current standards, and those individuals must go without any assistance for years until they meet the criteria in the chronic liver disease listings.

Another commenter noted that the symptoms of hepatitis C virus infection make learning a new, less strenuous trade an unrealistic option if an individual does not become symptomatic until later in life.

Response: While we understand the concern of the first commenter, we do not have the authority to do what the commenter asked. To qualify for Social Security Disability Insurance or Supplemental Security Income benefits, individuals must show that they are disabled under the definition of disability in the Act.

Likewise, with regard to the second comment, we cannot pay disability benefits under the Act to individuals who are not currently disabled but who may become disabled in the future. However, at the fifth step of our sequential evaluation process (described near the end of this preamble) we do consider an individual's age, education, and work experience. At this step, the older an individual becomes, the more likely it is that we will find the individual unable to make an adjustment to other work; that is, the more likely we will find that the individual is disabled.

Comment: One commenter recommended that we include a reference to hepatitis B under recurrent and persistent syndromes because chronic fatigue syndrome (CFS) and depression are common symptoms and these functional limitations are debilitating and prevalent enough that they merit inclusion.

Response: We did not adopt this comment but we did provide guidance on hepatitis B in final 5.00D4b and 105.00D4b. We did not include a reference to CFS in this final rule partly because it is a diagnosis of exclusion; that is, the diagnosis is not made if another physical or mental impairment, such as hepatitis, is present that can account for the symptoms. We explain our policy for evaluating CFS in Social Security Ruling 99–2p, "Titles II and XVI: Evaluating Cases Involving Chronic Fatigue Syndrome (CFS)," 83 FR 23380 (April 30, 1999).[3]

Comment: Many commenters stated that individuals undergoing interferon/ribavirin treatment for hepatitis C cannot work as the treatment seriously interferes with physical and mental stamina. One commenter observed that it was unfair to patients and employers to expect those who are undergoing treatment for hepatitis C to work due to the side effects of the treatment. They asked us to use compassion when we make decisions regarding changes in the chronic liver disease criteria. Another commenter stated that disability benefits would be helpful for patients when going through treatment or transplant as the symptoms attack on all fronts.

Response: Partly in response to these comments, we included guidance in final 5.00D4 and 105.00D4 about the types of treatment for hepatitis C, including interferon/ribavirin treatment for adults and children, and the common adverse effects of treatment. However, we cannot automatically grant disability benefits if an individual is undergoing treatment for hepatitis B or C. Everyone reacts differently to the treatment and we must evaluate the disease progression, side effects of treatment, and response to treatment on an individual basis, unless in the future we can identify a diagnostic technique that would allow us to use a conclusive presumption that a case of hepatitis is so severe the individual cannot, as a practical matter, engage in any gainful activity.

Comment: Some commenters suggested that we should include

[2] Institute of Medicine of the National Academies, Committee on Improving the Disability Decision Process. *Improving the Social Security Disability Decision Process.* Washington, DC: The National Academies Press, 2007. The report is available at *http://www.nap.edu/catalog.php?record_id=11859.*

[3] The ruling is also available at *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR99=02=di=01.html*

neuropsychological testing in the evaluation of any person seeking Social Security disability benefits for chronic liver disease, regardless of liver histology, because 50 percent of individuals with chronic hepatitis C experience cognitive impairment and chronic fatigue, even in individuals with mild liver disease.

Response: We did not adopt the comment. Neuropsychological testing is highly specialized, and we generally try to exhaust all other or more direct avenues before we purchase such testing. Also, the testing examines fine areas of brain functioning and not the global functioning that we are generally most interested in for our disability evaluations.

Comment: Several commenters suggested that the medical criteria be kept in line with the National Institutes of Health (NIH) *Consensus Statement on the Management of Hepatitis C* (the Consensus Statement).[4]

Response: With the additional material we added as described above, we believe that these final rules are consistent with the Consensus Statement to the extent appropriate for our disability evaluation criteria under the listings. There is a considerable amount of information in the Consensus Statement that is not specifically relevant to our disability adjudications (for example, discussion of treatment options and recommendations for more education and research) or that goes beyond what is appropriate to include in our listings.

Listings 5.06 and 105.06 Inflammatory Bowel Disease

Comment: We received many comments about IBD. Some commenters were concerned that the listings focused on recurrent intestinal obstruction or fistulae as practically the only criteria for disability due to IBD. The commenters agreed that most individuals with IBD respond to medical or surgical treatment and lead fairly normal lives, but they indicated that there is a subset of individuals who have recurring and persisting disease that is refractory to treatment and makes them unable to work. The commenters suggested that many of these individuals would not be covered by the proposed listings and would face difficulty with their claims.

The commenters indicated that individuals with IBD can be incapacitated by persistent abdominal pain that may be unassociated with either obstruction or fistulae. They also said that profound fatigue due to the underlying inflammatory disease or the resulting and often complex nutritional deficiencies that accompany these disorders may be incapacitating. The commenters mentioned several symptoms and signs that could be refractory to medical and surgical treatment; for example, recurrent obstruction, anemia, fistulae, abscess, or other perineal or intra-abdominal complications. They also noted that recurrent and persisting severe diarrhea, with or without incontinence, makes it impossible for many individuals with IBD to sustain any activity for even modest periods of time. One of the commenters stated that many of the most challenging symptoms of IBD cannot be directly quantified by the usual objective studies, including imaging or laboratory tests, resulting in our excluding relief to many who need and deserve it.

Another commenter stated that we did not sufficiently address recurrent diarrhea and bowel incontinence that do not lead to weight loss or malnutrition. This commenter noted that these conditions may require proximity to a restroom or may interfere with the ability to work in public. The commenter acknowledged that they are "probably not" listings issues, but said that there did not appear to be sufficient guidance for disability adjudicators on how to consider these issues.

Two individuals who have IBD and who had filed claims for disability benefits described how profound the disease was for them and expressed concern about any changes we might make that would make it more difficult to qualify. One of these commenters, who has Crohn's disease, described the embarrassment of the disease and the other kinds of illnesses she has had that are associated with the disease and its treatment. The other commenter said that he was against any change in our present regulations that would make it more difficult for a person with IBD to qualify for disability benefits. He said that the proposed changes would cause an added hardship for individuals with IBD.

Response: We adopted most of the comments and completely revised proposed listings 5.06 and 105.06 and the introductory text for IBD. In response to these comments, we added final 5.00E in the introductory text in part A and revised and expanded proposed 105.00F4 (final 105.00E) in part B to provide more detailed guidance for documenting and evaluating IBD in adults and children. We also added criteria in final listings 5.06 and 105.06 to include some of the other manifestations of IBD mentioned by the commenters.

The new sections in the introductory text include most of the examples of symptoms and signs of IBD that the commenters mentioned, as well as others that the commenters did not specifically mention, including a longer list of potential manifestations in other body systems than we included under the prior listings. In addition, we revised proposed listings 5.06 and 105.06 by adding a list of six manifestations in paragraph B of final listing 5.06 and a list of five manifestations in paragraph B of final listing 105.06.

We did not include criteria for manifestations like severe diarrhea or fecal incontinence. We believe that the effect of severe diarrhea is best identified at the listing level by the criteria in 5.06B1 and 105.06B1 (anemia with a hemoglobin of less than 10 g/dL) and 5.06B2 and 105.06B2 (serum albumin of 3.0g/dL or less). We agree that there are other consequences of severe diarrhea or fecal incontinence, such as the necessity to be near a restroom or the difficulty of sustaining activities for even modest amounts of time, that may significantly affect an individual's ability to work or a child's ability to function in an age-appropriate manner. However, we believe these consequences of IBD are more appropriately addressed on an individual case basis when we assess residual functional capacity or functional equivalence.

In considering these comments, we also noted that there were unintentional differences between proposed listings 5.06B and 105.06B, and that we included proposed 105.00F4 (final 105.00E) specifically for children but no corresponding guidance in proposed part A for adults. In making the revisions in the final rules, we determined that, with minor exceptions, there was no need for the information in part A to be different from the information in part B. Therefore, we added final 5.00E to correspond to final 105.00E, and we made a number of editorial changes to 105.00E for consistency between the two sections. Final 5.00E and 105.00E and final listings 5.06 and 105.06 are the same, except for the minor differences necessary to address childhood disability that we have already noted in the explanations of the final rules at the beginning of this preamble.

With regard to the last comments expressing concern that our changes may make it more difficult for individuals with IBD to qualify for disability benefits, we believe that the

[4] *http://consensus.nih.gov/2002/2002Hepatitis C2002116PDF.pdf.*

changes we are making in these final rules are an improvement over the proposed rules that address many of the commenters' concerns. Also, the final rules are consistent with advances in medical science and technology, our adjudicative experience, and our goal of appropriately finding all individuals who are unable to perform any gainful activity disabled under the listings.

Comment: One commenter stated that he was "perplexed" by the statement in the preamble to the NPRM that "anemia, when caused by inflammatory bowel disease, is not an appropriate indicator of listing-level severity." (See 66 FR at 57013.) The commenter noted that we have long held that chronic anemia with persistent hematocrit below 30 percent is of listing-level severity. The commenter asserted that people with chronic anemia are tired, fatigued, and have poor stamina, and that there are other factors that affect their ability to function.

Another commenter stated that our proposed reasons for changes to the listing were inaccurate. The commenter questioned our statement that "a gradual reduction in hemoglobin, even to very low levels, is often well tolerated and does not correlate with ability to function." (See 66 FR at 57013.) The commenter stated that studies show that quality of life and functional status correlate with hemoglobin levels.

Response: It is true that we have long had listings that are met with anemia demonstrated by hematocrits of 30 percent or less. We also agree that anemia may cause the kinds of symptoms listed. However, listing criteria must represent a level of severity that prevents "any gainful activity." We cannot presume, based only on low hematocrit (or hemoglobin) levels, that the symptoms referred to will be present or sufficiently severe in all cases to determine that an individual is disabled. The body adapts to a gradual lowering of hematocrit (or hemoglobin) levels, therefore there is not a strong correlation between hematocrit levels and the ability to function. We removed a similar criterion from the genitourinary system listings for the same reason. See 70 FR 38582, 38586 (2005).

However, we have included a criterion for anemia with hemoglobin of less than 10 g/dL as one of the criteria of final listings 5.06B and 105.06B. We believe that it is an appropriate criterion when it occurs in conjunction with at least one of the other manifestations of IBD listed in the final rules. We are using hemoglobin (measured in units of g/dL) rather than hematocrit (percent) in assessing the degree of anemia as the former laboratory measurement is more accurate.

Listing 5.08 Weight Loss Due to Any Digestive Disorder

Comment: A commenter suggested that we include guidance that height be measured without shoes in the introductory text to the listings. Another commenter noted that, although we explained in the NPRM how to round inches and centimeters, we did not explain how to round pounds and kilograms.

Response: We adopted the first comment. Because the final listings are based on BMI, we now explain in final 5.00G2a that measurements of both weight and height must be made without shoes.

We did not need to adopt the second comment because we changed the weight loss criteria to BMI measurements and as a consequence removed the proposed rule for rounding. Because of this change, we also did not include the height and weight tables from proposed listing 5.08.

Comment: Two commenters believed that the height and weight tables in the regulations did not reflect the chronicity and severity of disease in individuals with IBD who are routinely treated with corticosteroids. The commenters indicated that corticosteroids lead to substantial salt and water retention and increased fatty tissue accumulation, so that nutritionally depleted patients may have artificially sustained weight. They also noted that it is not uncommon for patients with crippling symptoms, hypoalbuminemia, and nutritional deficiencies to have "normal" or increased weight due to the corticosteroids.

Response: We agree with the commenters that individuals with IBD may have "normal" weight; however, final listing 5.08 is specifically for individuals with weight loss as a consequence of a digestive disorder. Individuals whose impairments do not meet listing 5.08 may still meet the criteria of another listing. As we explained earlier, we have significantly expanded final listings 5.06 and 105.06 to include criteria for many of the symptoms and signs of IBD. For example, we have included criteria in final 5.06B1 and B8 under which individuals with IBD who are nutritionally depleted but have sustained weight may qualify. Also in response to these comments, we have provided examples in final 5.00E2 and 105.00E2 of signs and laboratory findings that may demonstrate malnutrition in the absence of weight loss, such as edema, anemia, hypoalbuminemia, hypokalemia, hypocalcemia, and hypomagnesemia. If the impairment does not meet or medically equal a listing, we will continue our evaluation through the sequential evaluation process.

Listing 105.08 Malnutrition

Comment: Two commenters suggested that we move the guidelines for what is needed to document malnutrition from proposed 105.00F of the introductory text into listing 105.08 because they were so specific.

Response: We adopted the comments and included three of the proposed examples as criteria in final listing 105.08A. We did not include the example of steatorrhea for reasons we have already explained. Also, as explained earlier, we changed the criteria in final 105.08A1 for anemia to a hemoglobin of less than 10.0 g/dL.

Comment: One commenter suggested that we specify that we use the most current edition when we refer to the CDC chart in listing 105.08 and in the introductory text. This would ensure that the listing criteria continue to reflect the latest guidance.

Response: We adopted the comment. The change appears in final 105.00G2 and in final listings 105.08B1 and B2.

Listings 5.09 and 105.09

Comment: One commenter suggested that as long as an individual is required to take anti-rejection drugs after a transplanted organ, at the very least, medical benefits should continue.

Response: We did not adopt this comment because we do not have the authority to do what the commenter asked. We can only pay benefits to individuals who are under a disability as defined in the Act and our regulations, and Medicare and Medicaid benefits generally depend on continuing entitlement to disability benefits.

Comment: One commenter stated that disability benefits should last for 18 months after a liver transplant because transplants do not remedy the underlying cause of the disease, such as viral hepatitis.

Response: We did not adopt this comment because in our experience 12 months is a sufficient period after which we need to reevaluate each individual's status to see if he or she is still disabled. This is the period we provide for most other transplants. See, for example, listings 3.11 (lung), 4.09 (heart), 6.02 (kidney), 7.17 (aplastic anemia with bone marrow or stem cell transplantation), and 13.05 (lymphoma with bone marrow or stem cell transplantation). Also, we published the

liver transplant listing in 2002 in another notice; these final rules do not make any substantive changes to that rule, only editorial revisions. And as we have already noted, the 1-year rule does not mean that an individual's disability automatically ends 1 year after the transplant. Our rule is only that after 1 year we generally will consider whether the individual is still disabled. Our existing rules also allow our adjudicators to set a later diary date for review of continuing disability if the facts of the case warrant it.

Other Comments

Comment: One commenter did not support our proposal to remove reference listings. The commenter believed that it is easier for our adjudicators to recognize the need to document and evaluate an impairment if it is also included in the listing itself. The commenter also noted that reference listings assure the public and their physicians that a specific impairment has been considered.

Response: We did not adopt the comment. With one exception, all of the reference listings in the part A digestive disorder listings were to listing 5.08, the listing for weight loss. We believe that our adjudicators, the public, and their physicians will easily see that final listing 5.08 is applicable to weight loss due to any digestive disorder. The only exception in part A was for hepatic encephalopathy, which cross-referred to listing 12.02; however, we have now added a listing specifically for hepatic encephalopathy (final listing 5.05F) in the digestive disorders listings. Part B was essentially the same, with most reference listings cross-referring to listing 105.08, and a reference listing for hepatic encephalopathy, which we now list in final listing 105.05F. Prior listing 105.07C also referred to growth impairment listing 100.03. We are removing that reference listing without replacement; however, as we have already noted, we have added references to growth impairment in the introductory text to these listings and we believe that this is sufficient.

We do not agree that the prior reference listings were especially helpful to adjudicators. All individuals who would qualify under any of the provisions of our prior reference listings will continue to qualify under other listings or the rules for medical or functional equivalence for children. Also, because reference listings are redundant, we are removing them from all the body systems as we revise them; therefore, we would be inconsistent if we retained reference listings only in this body system. Our adjudicators are aware that the listings do not include all possible disabling impairments, so they review all of the evidence, including the claimant's allegations and the medical evidence from treating and other medical sources, to identify the impairments they must evaluate.

Comment: One commenter suggested that we include some discussion in the introductory text of how to evaluate digestive impairments for which there is no specific listing, such as peptic ulcer disease and chronic pancreatitis.

Response: We did not add specific information in the introductory text about peptic ulcer disease or chronic pancreatitis because we prefer to include information that is relevant to the application of these listings. However, we do make it clear that we may evaluate digestive disorders that are not specifically named in the introductory text under this body system.

Comment: One commenter asked that we consider the unique health risks and cultural issues that affect Asian Americans and immigrant communities.

Response: We did not adopt the comment. We are not aware of any current medical distinction that supports the suggestion.

Additional Information

What programs do these final rules affect?

These final rules affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these final rules also affect the Medicare and Medicaid programs.

Who can get disability benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act;
- Children of insured workers; and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured individuals.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How do we define disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above that results in . . .
title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual under age 18	marked and severe functional limitations.

How do we decide whether you are disabled?

To decide whether you are disabled under the Act, we use a five-step "sequential evaluation process," which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that

you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under SSI. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations. However, all of these processes also include steps at which we consider whether your impairment meets or medically equals one of our listings.

What are the listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How do we use the listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. Part B contains criteria that apply only to individuals who are under age 18. If your impairment does not meet the criteria in part B, we may then use the criteria in part A when those criteria give appropriate consideration to the effects of the impairment(s) in children. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What if you do not have an impairment(s) that meets or medically equals a listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will not deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you are not working and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the sequential evaluation process that we use to evaluate all disability claims. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled a listing. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

> The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

Our proposed rules met the criteria for an economically significant regulatory action under Executive Order 12866. They were also "major" rules under 5 U.S.C. 801ff. For the reasons stated earlier in this preamble, these final rules reflect changes we have made from the proposed rules. Based on these changes, we estimate that these final rules will result in program savings but will not constitute an economically significant regulatory action or "major" rules.

We are projecting savings in program expenditures as described below.

Program Savings

1. Title II

We estimate that these final rules would result in reduced program outlays resulting in the following savings (in millions of dollars) to the title II program ($132 million total in a 5-year period beginning in FY 2008).

FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
−$10	−$19	−$27	−$35	−$42	−$132[5]

[5] 5-year total may not be equal to the sum of the annual totals due to rounding.

2. Title XVI

We estimate that these final rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program ($25 million in a 5-year period beginning in FY 2008).

FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
−$1	−$3	−$5	−$8	−$8	−$25[6]

[6] Federal SSI payments due on October 1st in fiscal year 2012 are included with payments for the prior fiscal year.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in Part A, 5.00 and Part B, 105.00 of these final rules. The OMB Control Number for this collection is 0960–0642 expiring March 31, 2008.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Blind, Disability benefits, Old-age, survivors, and disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 25, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

Appendix 1 to Subpart P of Part 404—Listing of Impairments [Amended]

■ 2. Revise item 6 of the introductory text before part A of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

6. Digestive System (5.00 and 105.00): October 19, 2012.

* * * * *

■ 3. Revise section 5.00 in part A of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

Part A

* * * * *

5.00 DIGESTIVE SYSTEM

A. *What kinds of disorders do we consider in the digestive system?* Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. They may also lead to complications, such as obstruction, or be accompanied by manifestations in other body systems.

B. *What documentation do we need?* We need a record of your medical evidence, including clinical and laboratory findings. The documentation should include appropriate medically acceptable imaging studies and reports of endoscopy, operations, and pathology, as appropriate to each listing, to document the severity and duration of your digestive disorder. Medically acceptable imaging includes, but is not limited to, x-ray imaging, sonography, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), and radionuclide scans. *Appropriate* means that the technique used is the proper one to support the evaluation and diagnosis of the disorder. The findings required by these listings must occur within the period we are considering in connection with your application or continuing disability review.

C. *How do we consider the effects of treatment?*

1. Digestive disorders frequently respond to medical or surgical treatment; therefore, we generally consider the severity and duration of these disorders within the context of prescribed treatment.

2. We assess the effects of treatment, including medication, therapy, surgery, or any other form of treatment you receive, by determining if there are improvements in the symptoms, signs, and laboratory findings of your digestive disorder. We also assess any side effects of your treatment that may further limit your functioning.

3. To assess the effects of your treatment, we may need information about:

a. The treatment you have been prescribed (for example, the type of medication or therapy, or your use of parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy);

b. The dosage, method, and frequency of administration;

c. Your response to the treatment;

d. Any adverse effects of such treatment; and

e. The expected duration of the treatment.

4. Because the effects of treatment may be temporary or long-term, in most cases we need information about the impact of your treatment, including its expected duration and side effects, over a sufficient period of time to help us assess its outcome. When adverse effects of treatment contribute to the severity of your impairment(s), we will consider the duration or expected duration of the treatment when we assess the duration of your impairment(s).

5. If you need parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy to avoid debilitating complications of a digestive disorder, this treatment will not, in itself, indicate that you are unable to do any gainful activity, except under 5.07, short bowel syndrome (see 5.00F).

6. If you have not received ongoing treatment or have not had an ongoing relationship with the medical community despite the existence of a severe impairment(s), we will evaluate the severity and duration of your digestive impairment on the basis of the current medical and other evidence in your case record. If you have not received treatment, you may not be able to show an impairment that meets the criteria of one of the digestive system listings, but your digestive impairment may medically

equal a listing or be disabling based on consideration of your residual functional capacity, age, education, and work experience.

D. *How do we evaluate chronic liver disease?*

1. *General. Chronic liver disease* is characterized by liver cell necrosis, inflammation, or scarring (fibrosis or cirrhosis), due to any cause, that persists for more than 6 months. Chronic liver disease may result in portal hypertension, cholestasis (suppression of bile flow), extrahepatic manifestations, or liver cancer. (We evaluate liver cancer under 13.19.) Significant loss of liver function may be manifested by hemorrhage from varices or portal hypertensive gastropathy, ascites (accumulation of fluid in the abdominal cavity), hydrothorax (ascitic fluid in the chest cavity), or encephalopathy. There can also be progressive deterioration of laboratory findings that are indicative of liver dysfunction. Liver transplantation is the only definitive cure for end stage liver disease (ESLD).

2. *Examples of chronic liver disease* include, but are not limited to, chronic hepatitis, alcoholic liver disease, non-alcoholic steatohepatitis (NASH), primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), autoimmune hepatitis, hemochromatosis, drug-induced liver disease, Wilson's disease, and serum alpha-1 antitrypsin deficiency. Acute hepatic injury is frequently reversible, as in viral, drug-induced, toxin-induced, alcoholic, and ischemic hepatitis. In the absence of evidence of a chronic impairment, episodes of acute liver disease do not meet 5.05.

3. *Manifestations of chronic liver disease.*

a. *Symptoms* may include, but are not limited to, pruritis (itching), fatigue, nausea, loss of appetite, or sleep disturbances. Symptoms of chronic liver disease may have a poor correlation with the severity of liver disease and functional ability.

b. *Signs* may include, but are not limited to, jaundice, enlargement of the liver and spleen, ascites, peripheral edema, and altered mental status.

c. *Laboratory findings* may include, but are not limited to, increased liver enzymes, increased serum total bilirubin, increased ammonia levels, decreased serum albumin, and abnormal coagulation studies, such as increased International Normalized Ratio (INR) or decreased platelet counts. Abnormally low serum albumin or elevated INR levels indicate loss of synthetic liver function, with increased likelihood of cirrhosis and associated complications. However, other abnormal lab tests, such as liver enzymes, serum total bilirubin, or ammonia levels, may have a poor correlation with the severity of liver disease and functional ability. A liver biopsy may demonstrate the degree of liver cell necrosis, inflammation, fibrosis, and cirrhosis. If you have had a liver biopsy, we will make every reasonable effort to obtain the results; however, we will not purchase a liver biopsy. Imaging studies (CAT scan, ultrasound, MRI) may show the size and consistency (fatty liver, scarring) of the liver and document ascites (see 5.00D6).

4. *Chronic viral hepatitis infections.*

a. *General.*

(i) *Chronic viral hepatitis* infections are commonly caused by hepatitis C virus (HCV), and to a lesser extent, hepatitis B virus (HBV). Usually, these are slowly progressive disorders that persist over many years during which the symptoms and signs are typically nonspecific, intermittent, and mild (for example, fatigue, difficulty with concentration, or right upper quadrant pain). Laboratory findings (liver enzymes, imaging studies, liver biopsy pathology) and complications are generally similar in HCV and HBV. The spectrum of these chronic viral hepatitis infections ranges widely and includes an asymptomatic state; insidious disease with mild to moderate symptoms associated with fluctuating liver tests; extrahepatic manifestations; cirrhosis, both compensated and decompensated; ESLD with the need for liver transplantation; and liver cancer. Treatment for chronic viral hepatitis infections varies considerably based on medication tolerance, treatment response, adverse effects of treatment, and duration of the treatment. Comorbid disorders, such as HIV infection, may affect the clinical course of viral hepatitis infection(s) or may alter the response to medical treatment.

(ii) We evaluate all types of chronic viral hepatitis infections under 5.05 or any listing in an affected body system(s). If your impairment(s) does not meet or medically equal a listing, we will consider the effects of your hepatitis when we assess your residual functional capacity.

b. *Chronic hepatitis B virus (HBV) infection.*

(i) *Chronic HBV* infection is diagnosed by the detection of hepatitis B surface antigen (HBsAg) in the blood for at least 6 months. In addition, detection of the hepatitis B envelope antigen (HBeAg) suggests an increased likelihood of progression to cirrhosis and ESLD.

(ii) The therapeutic goal of treatment is to suppress HBV replication and thereby prevent progression to cirrhosis and ESLD. Treatment usually includes a combination of interferon injections and oral antiviral agents. Common adverse effects of treatment are the same as noted in 5.00D4c(ii) for HCV, and generally end within a few days after treatment is discontinued.

c. *Chronic hepatitis C virus (HCV) infection.*

(i) *Chronic HCV infection* is diagnosed by the detection of hepatitis C viral RNA in the blood for at least 6 months. Documentation of the therapeutic response to treatment is also monitored by the quantitative assay of serum HCV RNA ("HCV viral load"). Treatment usually includes a combination of interferon injections and oral ribavirin; whether a therapeutic response has occurred is usually assessed after 12 weeks of treatment by checking the HCV viral load. If there has been a substantial reduction in HCV viral load (also known as early viral response, or EVR), this reduction is predictive of a sustained viral response with completion of treatment. Combined therapy is commonly discontinued after 12 weeks when there is no early viral response, since in that circumstance there is little chance of obtaining a sustained viral response (SVR). Otherwise, treatment is usually continued for a total of 48 weeks.

(ii) Combined interferon and ribavirin treatment may have significant adverse effects that may require dosing reduction, planned interruption of treatment, or discontinuation of treatment. Adverse effects may include: Anemia (ribavirin-induced hemolysis), neutropenia, thrombocytopenia, fever, cough, fatigue, myalgia, arthralgia, nausea, loss of appetite, pruritis and insomnia. Behavioral side effects may also occur. Influenza-like symptoms are generally worse in the first 4 to 6 hours after each interferon injection and during the first weeks of treatment. Adverse effects generally end within a few days after treatment is discontinued.

d. *Extrahepatic manifestations of HBV and HCV.* In addition to their hepatic manifestations, both HBV and HCV may have significant extrahepatic manifestations in a variety of body systems. These include, but are not limited to: Keratoconjunctivitis (sicca syndrome), glomerulonephritis, skin disorders (for example, lichen planus, porphyria cutanea tarda), neuropathy, and immune dysfunction (for example, cryoglobulinemia, Sjögren's syndrome, and vasculitis). The extrahepatic manifestations of HBV and HCV may not correlate with the severity of your hepatic impairment. If your impairment(s) does not meet or medically equal a listing in an affected body system(s), we will consider the effects of your extrahepatic manifestations when we assess your residual functional capacity.

5. *Gastrointestinal hemorrhage* (5.02 and 5.05A). Gastrointestinal hemorrhaging can result in hematemesis (vomiting of blood), melena (tarry stools), or hematochezia (bloody stools). Under 5.02, the required transfusions of at least 2 units of blood must be at least 30 days apart and occur at least three times during a consecutive 6-month period. Under 5.05A, *hemodynamic instability* is diagnosed with signs such as pallor (pale skin), diaphoresis (profuse perspiration), rapid pulse, low blood pressure, postural hypotension (pronounced fall in blood pressure when arising to an upright position from lying down) or syncope (fainting). Hemorrhaging that results in hemodynamic instability is potentially life-threatening and therefore requires hospitalization for transfusion and supportive care. Under 5.05A, we require only one hospitalization for transfusion of at least 2 units of blood.

6. *Ascites or hydrothorax* (5.05B) indicates significant loss of liver function due to chronic liver disease. We evaluate ascites or hydrothorax that is not attributable to other causes under 5.05B. The required findings must be present on at least two evaluations at least 60 days apart within a consecutive 6-month period and despite continuing treatment as prescribed.

7. *Spontaneous bacterial peritonitis* (5.05C) is an infectious complication of chronic liver disease. It is diagnosed by ascitic peritoneal fluid that is documented to contain an absolute neutrophil count of at least 250 cells/mm^3. The required finding in 5.05C is satisfied with one evaluation documenting

peritoneal fluid infection. We do not evaluate other causes of peritonitis that are unrelated to chronic liver disease, such as tuberculosis, malignancy, and perforated bowel, under this listing. We evaluate these other causes of peritonitis under the appropriate body system listings.

8. *Hepatorenal syndrome* (5.05D) is defined as functional renal failure associated with chronic liver disease in the absence of underlying kidney pathology. Hepatorenal syndrome is documented by elevation of serum creatinine, marked sodium retention, and oliguria (reduced urine output). The requirements of 5.05D are satisfied with documentation of any one of the three laboratory findings on one evaluation. We do not evaluate known causes of renal dysfunction, such as glomerulonephritis, tubular necrosis, drug-induced renal disease, and renal infections, under this listing. We evaluate these other renal impairments under 6.00ff.

9. *Hepatopulmonary syndrome* (5.05E) is defined as arterial deoxygenation (hypoxemia) that is associated with chronic liver disease due to intrapulmonary arteriovenous shunting and vasodilatation in the absence of other causes of arterial deoxygenation. Clinical manifestations usually include dyspnea, orthodeoxia (increasing hypoxemia with erect position), platypnea (improvement of dyspnea with flat position), cyanosis, and clubbing. The requirements of 5.05E are satisfied with documentation of any one of the findings on one evaluation. In 5.05E1, we require documentation of the altitude of the testing facility because altitude affects the measurement of arterial oxygenation. We will not purchase the specialized studies described in 5.05E2; however, if you have had these studies at a time relevant to your claim, we will make every reasonable effort to obtain the reports for the purpose of establishing whether your impairment meets 5.05E2.

10. *Hepatic encephalopathy* (5.05F).

a. *General.* Hepatic encephalopathy usually indicates severe loss of hepatocellular function. We define hepatic encephalopathy under 5.05F as a recurrent or chronic neuropsychiatric disorder, characterized by abnormal behavior, cognitive dysfunction, altered state of consciousness, and ultimately coma and death. The diagnosis is established by changes in mental status associated with fleeting neurological signs, including "flapping tremor" (asterixis), characteristic electroencephalographic (EEG) abnormalities, or abnormal laboratory values that indicate loss of synthetic liver function. We will not purchase the EEG testing described in 5.05F3b; however, if you have had this test at a time relevant to your claim, we will make every reasonable effort to obtain the report for the purpose of establishing whether your impairment meets 5.05F.

b. *Acute encephalopathy.* We will not evaluate your acute encephalopathy under 5.05F if it results from conditions other than chronic liver disease, such as vascular events and neoplastic diseases. We will evaluate these other causes of acute encephalopathy under the appropriate body system listings.

11. *End stage liver disease (ESLD) documented by scores from the SSA Chronic Liver Disease (SSA CLD) calculation* (5.05G).

a. We will use the SSA CLD score to evaluate your ESLD under 5.05G. We explain how we calculate the SSA CLD score in b. through g. of this section.

b. To calculate the SSA CLD score, we use a formula that includes three laboratory values: Serum total bilirubin (mg/dL), serum creatinine (mg/dL), and International Normalized Ratio (INR). The formula for the SSA CLD score calculation is:

$9.57 \times [\text{Log}_e(\text{serum creatinine mg/dL})]$
$+3.78 \times [\text{Log}_e(\text{serum total bilirubin mg/dL})]$
$+11.2 \times [\text{Log}_e(\text{INR})]$
$+6.43$

c. When we indicate "Log_e" in the formula for the SSA CLD score calculation, we mean the "base *e* logarithm" or "natural logarithm" (ln) of a numerical laboratory value, not the "base 10 logarithm" or "common logarithm" (log) of the laboratory value, and not the actual laboratory value. For example, if an individual has laboratory values of serum creatinine 1.2 mg/dL, serum total bilirubin 2.2 mg/dL, and INR 1.0, we would compute the SSA CLD score as follows:

$9.57 \times [\text{Log}_e(\text{serum creatinine 1.2 mg/dL}) = 0.182]$
$+3.78 \times [\text{Log}_e(\text{serum total bilirubin 2.2 mg/dL}) = 0.788]$
$+11.2 \times [\text{Log}_e(\text{INR 1.0}) = 0]$
$+6.43$

$= 1.74 + 2.98 + 0 + 6.43$
$= 11.15$, which is then rounded to an SSA CLD score of 11.

d. For any SSA CLD score calculation, all of the required laboratory values must have been obtained within 30 days of each other. If there are multiple laboratory values within the 30-day interval for any given laboratory test (serum total bilirubin, serum creatinine, or INR), we will use the highest value for the SSA CLD score calculation. We will round all laboratory values less than 1.0 up to 1.0.

e. Listing 5.05G requires two SSA CLD scores. The laboratory values for the second SSA CLD score calculation must have been obtained at least 60 days after the latest laboratory value for the first SSA CLD score and within the required 6-month period. We will consider the date of each SSA CLD score to be the date of the first laboratory value used for its calculation.

f. If you are in renal failure or on dialysis within a week of any serum creatinine test in the period used for the SSA CLD calculation, we will use a serum creatinine of 4, which is the maximum serum creatinine level allowed in the calculation, to calculate your SSA CLD score.

g. If you have the two SSA CLD scores required by 5.05G, we will find that your impairment meets the criteria of the listing from at least the date of the first SSA CLD score.

12. *Liver transplantation* (5.09) may be performed for metabolic liver disease, progressive liver failure, life-threatening complications of liver disease, hepatic malignancy, and acute fulminant hepatitis (viral, drug-induced, or toxin-induced). We will consider you to be disabled for 1 year from the date of the transplantation. Thereafter, we will evaluate your residual impairment(s) by considering the adequacy of post-transplant liver function, the requirement for post-transplant antiviral therapy, the frequency and severity of rejection episodes, comorbid complications, and all adverse treatment effects.

E. *How do we evaluate inflammatory bowel disease (IBD)?*

1. *Inflammatory bowel disease* (5.06) includes, but is not limited to, Crohn's disease and ulcerative colitis. These disorders, while distinct entities, share many clinical, laboratory, and imaging findings, as well as similar treatment regimens. Remissions and exacerbations of variable duration are the hallmark of IBD. Crohn's disease may involve the entire alimentary tract from the mouth to the anus in a segmental, asymmetric fashion. Obstruction, stenosis, fistulization, perineal involvement, and extraintestinal manifestations are common. Crohn's disease is rarely curable and recurrence may be a lifelong problem, even after surgical resection. In contrast, ulcerative colitis only affects the colon. The inflammatory process may be limited to the rectum, extend proximally to include any contiguous segment, or involve the entire colon. Ulcerative colitis may be cured by total colectomy.

2. Symptoms and signs of IBD include diarrhea, fecal incontinence, rectal bleeding, abdominal pain, fatigue, fever, nausea, vomiting, arthralgia, abdominal tenderness, palpable abdominal mass (usually inflamed loops of bowel) and perineal disease. You may also have signs or laboratory findings indicating malnutrition, such as weight loss, edema, anemia, hypoalbuminemia, hypokalemia, hypocalcemia, or hypomagnesemia.

3. IBD may be associated with significant extraintestinal manifestations in a variety of body systems. These include, but are not limited to, involvement of the eye (for example, uveitis, episcleritis, iritis); hepatobiliary disease (for example, gallstones, primary sclerosing cholangitis); urologic disease (for example, kidney stones, obstructive hydronephrosis); skin involvement (for example, erythema nodosum, pyoderma gangrenosum); or non-destructive inflammatory arthritis. You may also have associated thromboembolic disorders or vascular disease. These manifestations may not correlate with the severity of your IBD. If your impairment does not meet any of the criteria of 5.06, we will consider the effects of your extraintestinal manifestations in determining whether you have an impairment(s) that meets or medically equals another listing, and we will also consider the effects of your extraintestinal manifestations when we assess your residual functional capacity.

4. Surgical diversion of the intestinal tract, including ileostomy and colostomy, does not preclude any gainful activity if you are able to maintain adequate nutrition and function of the stoma. However, if you are not able to maintain adequate nutrition, we will evaluate your impairment under 5.08.

F. *How do we evaluate short bowel syndrome (SBS)?*

1. *Short bowel syndrome* (5.07) is a disorder that occurs when ischemic vascular insults (for example, volvulus), trauma, or IBD complications require surgical resection of more than one-half of the small intestine, resulting in the loss of intestinal absorptive surface and a state of chronic malnutrition. The management of SBS requires long-term parenteral nutrition via an indwelling central venous catheter (central line); the process is often referred to as *hyperalimentation* or *total parenteral nutrition* (TPN). Individuals with SBS can also feed orally, with variable amounts of nutrients being absorbed through their remaining intestine. Over time, some of these individuals can develop additional intestinal absorptive surface, and may ultimately be able to be weaned off their parenteral nutrition.

2. Your impairment will continue to meet 5.07 as long as you remain dependent on daily parenteral nutrition via a central venous catheter for most of your nutritional requirements. Long-term complications of SBS and parenteral nutrition include central line infections (with or without septicemia), thrombosis, hepatotoxicity, gallstones, and loss of venous access sites. Intestinal transplantation is the only definitive treatment for individuals with SBS who remain chronically dependent on parenteral nutrition.

3. To document SBS, we need a copy of the operative report of intestinal resection, the summary of the hospitalization(s) including: Details of the surgical findings, medically appropriate postoperative imaging studies that reflect the amount of your residual small intestine, or if we cannot get one of these reports, other medical reports that include details of the surgical findings. We also need medical documentation that you are dependent on daily parenteral nutrition to provide most of your nutritional requirements.

G. *How do we evaluate weight loss due to any digestive disorder?*

1. In addition to the impairments specifically mentioned in these listings, other digestive disorders, such as esophageal stricture, pancreatic insufficiency, and malabsorption, may result in significant weight loss. We evaluate weight loss due to any digestive disorder under 5.08 by using the Body Mass Index (BMI). We also provide a criterion in 5.06B for lesser weight loss resulting from IBD.

2. BMI is the ratio of your weight to the square of your height. Calculation and interpretation of the BMI are independent of gender in adults.

a. We calculate BMI using inches and pounds, meters and kilograms, or centimeters and kilograms. We must have measurements of your weight and height without shoes for these calculations.

b. We calculate BMI using one of the following formulas:

English Formula

$$BMI = \left(\frac{\text{Weight in Pounds}}{(\text{Height in Inches}) \times (\text{Height in Inches})} \right) \times 703$$

Metric Formula

$$BMI = \frac{\text{Weight in Kilograms}}{(\text{Height in Meters}) \times (\text{Height in Meters})}$$

Or

$$BMI = \left(\frac{\text{Weight in Kilograms}}{(\text{Height in Centimeters}) \times (\text{Height in Centimeters})} \right) \times 10{,}000$$

H. *What do we mean by the phrase "consider under a disability for 1 year"?* We use the phrase "consider under a disability for 1 year" following a specific event in 5.02, 5.05A, and 5.09 to explain how long your impairment can meet the requirements of those particular listings. This phrase does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your impairment continues to meet a listing or is otherwise disabling. For example, if you have received a liver transplant, you may have become disabled before the transplant because of chronic liver disease. Therefore, we do not restrict our determination of the onset of disability to the date of the specified event. We will establish an onset date earlier than the date of the specified event if the evidence in your case record supports such a finding.

I. *How do we evaluate impairments that do not meet one of the digestive disorder listings?*

1. These listings are only examples of common digestive disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system. For example, if you have hepatitis B or C and you are depressed, we will evaluate your impairment under 12.04.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. In this situation, we will proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we decide whether you continue to be disabled, we use the rules in §§ 404.1594, 416.994, and 416.994a as appropriate.

5.01 *Category of Impairments, Digestive System*

5.02 *Gastrointestinal hemorrhaging from any cause, requiring blood transfusion* (with or without hospitalization) of at least 2 units of blood per transfusion, and occurring at least three times during a consecutive 6-month period. The transfusions must be at least 30 days apart within the 6-month period. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

5.03 [Reserved]

5.04 [Reserved]

5.05 *Chronic liver disease*, with:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under a disability for 1 year

following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least two evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or

2. Appropriate medically acceptable imaging or physical examination and one of the following:

a. Serum albumin of 3.0 g/dL or less; or

b. International Normalized Ratio (INR) of at least 1.5.

OR

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm^3.

OR

D. Hepatorenal syndrome as described in 5.00D8, with one of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or

2. Oliguria with 24-hour urine output less than 500 mL; or

3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

E. Hepatopulmonary syndrome as described in 5.00D9, with:

1. Arterial oxygenation (P_aO_2) on room air of:

a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or

b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or

c. 50 mm Hg or less, at test sites above 6000 feet; or

2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt: or

3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:

a. Asterixis or other fluctuating physical neurological abnormalities; or

b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or

c. Serum albumin of 3.0 g/dL or less; or

d. International Normalized Ratio (INR) of 1.5 or greater.

OR

G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

5.06 *Inflammatory bowel disease (IBD)* documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period;

OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or

2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or

3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or

6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

5.07 *Short bowel syndrome (SBS),* due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter (see 5.00F).

5.08 *Weight loss due to any digestive disorder* despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

5.09 *Liver transplantation.* Consider under a disability for 1 year following the date of transplantation; thereafter, evaluate the residual impairment(s) (see 5.00D12 and 5.00H).

* * * * *

■ 4. Revise listing 6.02C4 in part A of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

Part A

* * * * *

6.02 * * *

* * * * *

C. * * *

4. Persistent anorexia with weight loss determined by body mass index (BMI) of less than 18.0, calculated on at least two evaluations at least 30 days apart within a consecutive 6-month period (see 5.00G2).

* * * * *

■ 5. Revise listing 12.09G in part A of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

Part A

* * * * *

12.09 * * *

* * * * *

G. Gastritis. Evaluate under 5.00.

* * * * *

■ 6. Revise section 105.00 in part B of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

Part B

* * * * *

105.00 DIGESTIVE SYSTEM

A. *What kinds of disorders do we consider in the digestive system?* Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. They may also lead to complications, such as obstruction, or be accompanied by manifestations in other body systems. Congenital abnormalities involving the organs of the gastrointestinal system may interfere with the ability to maintain adequate nutrition, growth, and development.

B. *What documentation do we need?* We need a record of your medical evidence, including clinical and laboratory findings. The documentation should include appropriate medically acceptable imaging studies and reports of endoscopy, operations, and pathology, as appropriate to each listing, to document the severity and duration of your digestive disorder. We may also need assessments of your growth and development. Medically acceptable imaging includes, but is not limited to, x-ray imaging, sonography, computerized axial tomography (CAT scan), magnetic resonance imaging (MRI), and radionuclide scans. *Appropriate* means that the technique used is the proper one to support the evaluation and diagnosis of the disorder. The findings required by these listings must occur within the period we are considering in connection with your application or continuing disability review.

C. *How do we consider the effects of treatment?*

1. Digestive disorders frequently respond to medical or surgical treatment; therefore, we generally consider the severity and duration of these disorders within the context of the prescribed treatment.

2. We assess the effects of treatment, including medication, therapy, surgery, or

any other form of treatment you receive, by determining if there are improvements in the symptoms, signs, and laboratory findings of your digestive disorder. We also assess any side effects of your treatment that may further limit your functioning.

3. To assess the effects of your treatment, we may need information about:

a. The treatment you have been prescribed (for example, the type of medication or therapy, or your use of parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy);

b. The dosage, method, and frequency of administration;

c. Your response to the treatment;

d. Any adverse effects of such treatment; and

e. The expected duration of the treatment.

4. Because the effects of treatment may be temporary or long-term, in most cases we need information about the impact of your treatment, including its expected duration and side effects, over a sufficient period of time to help us assess its outcome. When adverse effects of treatment contribute to the severity of your impairment(s), we will consider the duration or expected duration of the treatment when we assess the duration of your impairment(s).

5. If you need parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy to avoid debilitating complications of a digestive disorder, this treatment will not, in itself, indicate that you have marked and severe functional limitations. The exceptions are 105.07, short bowel syndrome, and 105.10, for children who have not attained age 3 and who require supplemental daily enteral feedings via a gastrostomy (see 105.00F and 105.00H).

6. If you have not received ongoing treatment or have not had an ongoing relationship with the medical community despite the existence of a severe impairment(s), we will evaluate the severity and duration of your digestive impairment on the basis of current medical and other evidence in your case record. If you have not received treatment, you may not be able to show an impairment that meets the criteria of one of the digestive system listings, but your digestive impairment may medically equal a listing or functionally equal the listings.

D. *How do we evaluate chronic liver disease?*

1. *General. Chronic liver disease* is characterized by liver cell necrosis, inflammation, or scarring (fibrosis or cirrhosis), due to any cause, that persists for more than 6 months. Chronic liver disease may result in portal hypertension, cholestasis (suppression of bile flow), extrahepatic manifestations, or liver cancer. (We evaluate liver cancer under 113.03.) Significant loss of liver function may be manifested by hemorrhage from varices or portal hypertensive gastropathy, ascites (accumulation of fluid in the abdominal cavity), hydrothorax (ascitic fluid in the chest cavity), or encephalopathy. There can also be progressive deterioration of laboratory findings that are indicative of liver dysfunction. Liver transplantation is the only definitive cure for end stage liver disease (ESLD).

2. *Examples of chronic liver disease* include, but are not limited to, biliary atresia, chronic hepatitis, non-alcoholic steatohepatitis (NASH), primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), autoimmune hepatitis, hemochromatosis, drug-induced liver disease, Wilson's disease, and serum alpha-1 antitrypsin deficiency. Children can also have congenital abnormalities of abdominal organs or inborn metabolic disorders that result in chronic liver disease. Acute hepatic injury is frequently reversible as in viral, drug-induced, toxin-induced, and ischemic hepatitis. In the absence of evidence of a chronic impairment, episodes of acute liver disease do not meet 105.05.

3. *Manifestations of chronic liver disease.*

a. *Symptoms* may include, but are not limited to, pruritis (itching), fatigue, nausea, loss of appetite, or sleep disturbances. Children can also have associated developmental delays or poor school performance. Symptoms of chronic liver disease may have a poor correlation with the severity of liver disease and functional ability.

b. *Signs* may include, but are not limited to, jaundice, enlargement of the liver and spleen, ascites, peripheral edema, and altered mental status.

c. *Laboratory findings* may include, but are not limited to, increased liver enzymes, increased serum total bilirubin, increased ammonia levels, decreased serum albumin, and abnormal coagulation studies, such as increased International Normalized Ratio (INR) or decreased platelet counts. Abnormally low serum albumin or elevated INR levels indicate loss of synthetic liver function, with increased likelihood of cirrhosis and associated complications. However, other abnormal lab tests, such as liver enzymes, serum total bilirubin, or ammonia levels, may have a poor correlation with the severity of liver disease and functional ability. A liver biopsy may demonstrate the degree of liver cell necrosis, inflammation, fibrosis, and cirrhosis. If you have had a liver biopsy, we will make every reasonable effort to obtain the results; however, we will not purchase a liver biopsy. Imaging studies (CAT scan, ultrasound, MRI) may show the size and consistency (fatty liver, scarring) of the liver and document ascites (see 105.00D6).

4. *Chronic viral hepatitis infections.*

a. *General.*

(i) *Chronic viral hepatitis* infections are commonly caused by hepatitis C virus (HCV), and to a lesser extent, hepatitis B virus (HBV). Usually, these are slowly progressive disorders that persist over many years during which the symptoms and signs are typically nonspecific, intermittent, and mild (for example, fatigue, difficulty with concentration, or right upper quadrant pain). Laboratory findings (liver enzymes, imaging studies, liver biopsy pathology) and complications are generally similar in HCV and HBV. The spectrum of these chronic viral hepatitis infections ranges widely and includes an asymptomatic state; insidious disease with mild to moderate symptoms associated with fluctuating liver tests; extrahepatic manifestations; cirrhosis, both compensated and decompensated; ESLD with the need for liver transplantation; and liver cancer. Treatment for chronic viral hepatitis infections varies considerably based on age, medication tolerance, treatment response, adverse effects of treatment, and duration of the treatment. Comorbid disorders, such as HIV infection, may affect the clinical course of viral hepatitis infection(s) or may alter the response to medical treatment.

(ii) We evaluate all types of chronic viral hepatitis infections under 105.05 or any listing in an affected body system(s). If your impairment(s) does not meet or medically equal a listing, we will consider the effects of your hepatitis when we assess whether your impairment(s) functionally equals the listings.

b. *Chronic hepatitis B virus (HBV) infection.*

(i) *Chronic HBV* infection is diagnosed by the detection of hepatitis B surface antigen (HBsAg) in the blood for at least 6 months. In addition, detection of the hepatitis B envelope antigen (HBeAg) suggests an increased likelihood of progression to cirrhosis and ESLD.

(ii) The therapeutic goal of treatment is to suppress HBV replication and thereby prevent progression to cirrhosis and ESLD. Treatment usually includes a combination of interferon injections and oral antiviral agents. Common adverse effects of treatment are the same as noted in 105.00D4c(ii) for HCV, and generally end within a few days after treatment is discontinued.

c. *Chronic hepatitis C virus (HCV) infection.*

(i) *Chronic HCV infection* is diagnosed by the detection of hepatitis C viral RNA in the blood for at least 6 months. Documentation of the therapeutic response to treatment is also monitored by the quantitative assay of serum HCV RNA ("HCV viral load"). Treatment usually includes a combination of interferon injections and oral ribavirin; whether a therapeutic response has occurred is usually assessed after 12 weeks of treatment by checking the HCV viral load. If there has been a substantial reduction in HCV viral load (also known as early viral response, or EVR), this reduction is predictive of a sustained viral response with completion of treatment. Combined therapy is commonly discontinued after 12 weeks when there is no early viral response, since in that circumstance there is little chance of obtaining a sustained viral response (SVR). Otherwise, treatment is usually continued for a total of 48 weeks.

(ii) Combined interferon and ribavirin treatment may have significant adverse effects that may require dosing reduction, planned interruption of treatment, or discontinuation of treatment. Adverse effects may include: Anemia (ribavirin-induced hemolysis), neutropenia, thrombocytopenia, fever, cough, fatigue, myalgia, arthralgia, nausea, loss of appetite, pruritis, and insomnia. Behavioral side effects may also occur. Influenza-like symptoms are generally worse in the first 4 to 6 hours after each interferon injection and during the first weeks of treatment. Adverse effects generally end within a few days after treatment is discontinued.

d. *Extrahepatic manifestations of HBV and HCV.* In addition to their hepatic manifestations, both HBV and HCV may have significant extrahepatic manifestations in a variety of body systems. These include, but are not limited to: Keratoconjunctivitis (sicca syndrome), glomerulonephritis, skin disorders (for example, lichen planus, porphyria cutanea tarda), neuropathy, and immune dysfunction (for example, cryoglobulinemia, Sjögren's syndrome, and vasculitis). The extrahepatic manifestations of HBV and HCV may not correlate with the severity of your hepatic impairment. If your impairment(s) does not meet or medically equal a listing in an affected body system(s), we will consider the effects of your extrahepatic manifestations when we determine whether your impairment(s) functionally equals the listings.

5. *Gastrointestinal hemorrhage* (105.02 and 105.05A). Gastrointestinal hemorrhaging can result in hematemesis (vomiting of blood), melena (tarry stools), or hematochezia (bloody stools). Under 105.02, the required transfusions of at least 10 cc of blood/kg of body weight must be at least 30 days apart and occur at least three times during a consecutive 6-month period. Under 105.05A, *hemodynamic instability* is diagnosed with signs such as pallor (pale skin), diaphoresis (profuse perspiration), rapid pulse, low blood pressure, postural hypotension (pronounced fall in blood pressure when arising to an upright position from lying down) or syncope (fainting). Hemorrhaging that results in hemodynamic instability is potentially life-threatening and therefore requires hospitalization for transfusion and supportive care. Under 105.05A, we require only one hospitalization for transfusion of at least 10 cc of blood/kg of body weight.

6. *Ascites or hydrothorax* (105.05B) indicates significant loss of liver function due to chronic liver disease. We evaluate ascites or hydrothorax that is not attributable to other causes under 105.05B. The required findings must be present on at least two evaluations at least 60 days apart within a consecutive 6-month period and despite continuing treatment as prescribed.

7. *Spontaneous bacterial peritonitis* (105.05C) is an infectious complication of chronic liver disease. It is diagnosed by ascitic peritoneal fluid that is documented to contain an absolute neutrophil count of at least 250 cells/mm^3. The required finding in 105.05C is satisfied with one evaluation documenting peritoneal fluid infection. We do not evaluate other causes of peritonitis that are unrelated to chronic liver disease, such as tuberculosis, malignancy, and perforated bowel, under this listing. We evaluate these other causes of peritonitis under the appropriate body system listings.

8. *Hepatorenal syndrome* (105.05D) is defined as functional renal failure associated with chronic liver disease in the absence of underlying kidney pathology. Hepatorenal syndrome is documented by elevation of serum creatinine, marked sodium retention, and oliguria (reduced urine output). The requirements of 105.05D are satisfied with documentation of any one of the three laboratory findings on one evaluation. We do not evaluate known causes of renal dysfunction, such as glomerulonephritis, tubular necrosis, drug-induced renal disease, and renal infections, under this listing. We evaluate these other renal impairments under 106.00ff.

9. *Hepatopulmonary syndrome* (105.05E) is defined as arterial deoxygenation (hypoxemia) that is associated with chronic liver disease due to intrapulmonary arteriovenous shunting and vasodilatation, in the absence of other causes of arterial deoxygenation. Clinical manifestations usually include dyspnea, orthodeoxia (increasing hypoxemia with erect position), platypnea (improvement of dyspnea with flat position), cyanosis, and clubbing. The requirements of 105.05E are satisfied with documentation of any one of the findings on one evaluation. In 105.05E1, we require documentation of the altitude of the testing facility because altitude affects the measurement of arterial oxygenation. We will not purchase the specialized studies described in 105.05E2; however, if you have had these studies at a time relevant to your claim, we will make every reasonable effort to obtain the reports for the purpose of establishing whether your impairment meets 105.05E2.

10. *Hepatic encephalopathy* (105.05F).

a. *General.* Hepatic encephalopathy usually indicates severe loss of hepatocellular function. We define hepatic encephalopathy under 105.05F as a recurrent or chronic neuropsychiatric disorder, characterized by abnormal behavior, cognitive dysfunction, altered state of consciousness, and ultimately coma and death. The diagnosis is established by changes in mental status associated with fleeting neurological signs, including "flapping tremor" (asterixis), characteristic electroencephalographic (EEG) abnormalities, or abnormal laboratory values that indicate loss of synthetic liver function. We will not purchase the EEG testing described in 105.05F3b. However, if you have had this test at a time relevant to your claim, we will make every reasonable effort to obtain the report for the purpose of establishing whether your impairment meets 105.05F.

b. *Acute encephalopathy.* We will not evaluate your acute encephalopathy under 105.05F if it results from conditions other than chronic liver disease, such as vascular events and neoplastic diseases. We will evaluate these other causes of acute encephalopathy under the appropriate body system listings.

11. *End stage liver disease (ESLD) documented by scores from the SSA Chronic Liver Disease (SSA CLD) calculation (105.05G1) and SSA Chronic Liver Disease-Pediatric (SSA CLD–P) calculation (105.05G2).*

a. *SSA CLD score.*

(i) If you are age 12 or older, we will use the SSA CLD score to evaluate your ESLD under 105.05G1. We explain how we calculate the SSA CLD score in a(ii) through a(vii) of this section.

(ii) To calculate the SSA CLD score, we use a formula that includes three laboratory values: Serum total bilirubin (mg/dL), serum creatinine (mg/dL), and International Normalized Ratio (INR). The formula for the SSA CLD score calculation is:

$9.57 \times [\text{Log}_e \text{ (serum creatinine mg/dL)}]$
$+3.78 \times [\text{Log}_e \text{ (serum total bilirubin mg/dL)}]$
$+11.2 \times [\text{Log}_e \text{ (INR)}]$
$+6.43$

(iii) When we indicate "Log$_e$" in the formula for the SSA CLD score calculation, we mean the "base *e* logarithm" or "natural logarithm" (ln) of a numerical laboratory value, not the "base 10 logarithm" or "common logarithm" (log) of the laboratory value, and not the actual laboratory value. For an example of SSA CLD calculation, see 5.00D11c.

(iv) For any SSA CLD score calculation, all of the required laboratory values must have been obtained within 30 days of each other. If there are multiple laboratory values within the 30-day interval for any given laboratory test (serum total bilirubin, serum creatinine, or INR), we will use the highest value for the SSA CLD score calculation. We will round all laboratory values less than 1.0 up to 1.0.

(v) Listing 105.05G requires two SSA CLD scores. The laboratory values for the second SSA CLD score calculation must have been obtained at least 60 days after the latest laboratory value for the first SSA CLD score and within the required 6-month period. We will consider the date of each SSA CLD score to be the date of the first laboratory value used for its calculation.

(vi) If you are in renal failure or on dialysis within a week of any serum creatinine test in the period used for the SSA CLD calculation, we will use a serum creatinine of 4, which is the maximum serum creatinine level allowed in the calculation, to calculate your SSA CLD score.

(vii) If you have the two SSA CLD scores required by 105.05G1, we will find that your impairment meets the criteria of the listing from at least the date of the first SSA CLD score.

b. *SSA CLD–P score.*

(i) If you have not attained age 12, we will use the SSA CLD–P score to evaluate your ESLD under 105.05G2. We explain how we calculate the SSA CLD–P score in b(ii) through b(vii) of this section.

(ii) To calculate the SSA CLD–P score, we use a formula that includes four parameters: Serum total bilirubin (mg/dL), International Normalized Ratio (INR), serum albumin (g/dL), and whether growth failure is occurring. The formula for the SSA CLD–P score calculation is:

$4.80 \times [\text{Log}_e \text{ (serum total bilirubin mg/dL)}]$
$+18.57 \times [\text{Log}_e \text{ (INR)}]$
$-6.87 \times [\text{Log}_e \text{ (serum albumin g/dL)}]$
$+6.67$ if the child has growth failure (<-2 standard deviations for weight or height)

(iii) When we indicate "Log$_e$" in the formula for the SSA CLD–P score calculation, we mean the "base *e* logarithm" or "natural logarithm" (ln) of a numerical laboratory value, not the "base 10 logarithm" or "common logarithm" (log) of the laboratory value, and not the actual laboratory value. For example, if a female child is 4.0 years old, has a current weight of 13.5 kg (10th percentile for age) and height of 92 cm (less than the third percentile for age), and has laboratory values of serum total bilirubin 2.2 mg/dL, INR 1.0, and serum albumin 3.5 g/dL, we will compute the SSA CLD–P score as follows:

$4.80 \times [\text{Log}_e$ +(serum total bilirubin 2.2 mg/dL) = 0.788]
$+18.57 \times [\text{Log}_e$ (INR 1.0) = 0]
$-6.87 \times [\text{Log}_e$ +(serum albumin 3.5 g/dL) = 1.253]
+6.67

= 3.78 + 0 − 8.61 + 6.67
= 1.84, which is then rounded to an SSA CLD–P score of 2

(iv) For any SSA CLD–P score calculation, all of the required laboratory values (serum total bilirubin, INR, or serum albumin) must have been obtained within 30 days of each other. We will not purchase INR values for children who have not attained age 12. If there is no INR value for a child under 12 within the applicable time period, we will use an INR value of 1.1 to calculate the SSA CLD–P score. If there are multiple laboratory values within the 30-day interval for any given laboratory test, we will use the highest serum total bilirubin and INR values and the lowest serum albumin value for the SSA CLD–P score calculation. We will round all laboratory values less than 1.0 up to 1.0.

(v) The weight and length/height measurements used for the calculation must be obtained from one evaluation within the same 30-day period as in D11b(iv).

(vi) Listing 105.05G2 requires two SSA CLD–P scores. The laboratory values for the second SSA CLD–P score calculation must have been obtained at least 60 days after the latest laboratory value for the first SSA CLD–P score and within the required 6-month period. We will consider the date of each SSA CLD–P score to be the date of the first laboratory value used for its calculation.

(vii) If you have the two SSA CLD–P scores required by listing 105.05G2, we will find that your impairment meets the criteria of the listing from at least the date of the first SSA CLD–P score.

12. *Extrahepatic biliary atresia (EBA)* (105.05H) usually presents in the first 2 months of life with persistent jaundice. The impairment meets 105.05H if the diagnosis of EBA is confirmed by liver biopsy or intraoperative cholangiogram that shows obliteration of the extrahepatic biliary tree. EBA is usually surgically treated by portoenterostomy (for example, Kasai procedure). If this surgery is not performed in the first months of life or is not completely successful, liver transplantation is indicated. If you have had a liver transplant, we will evaluate your impairment under 105.09.

13. *Liver transplantation* (105.09) may be performed for metabolic liver disease, progressive liver failure, life-threatening complications of liver disease, hepatic malignancy, and acute fulminant hepatitis (viral, drug-induced, or toxin-induced). We will consider you to be disabled for 1 year from the date of the transplantation. Thereafter, we will evaluate your residual impairment(s) by considering the adequacy of post-transplant liver function, the requirement for post-transplant antiviral therapy, the frequency and severity of rejection episodes, comorbid complications, and all adverse treatment effects.

E. *How do we evaluate inflammatory bowel disease (IBD)?*

1. *Inflammatory bowel disease* (105.06) includes, but is not limited to, Crohn's disease and ulcerative colitis. These disorders, while distinct entities, share many clinical, laboratory, and imaging findings, as well as similar treatment regimens. Remissions and exacerbations of variable duration are the hallmark of IBD. Crohn's disease may involve the entire alimentary tract from the mouth to the anus in a segmental, asymmetric fashion. Obstruction, stenosis, fistulization, perineal involvement, and extraintestinal manifestations are common. Crohn's disease is rarely curable and recurrence may be a lifelong problem, even after surgical resection. In contrast, ulcerative colitis only affects the colon. The inflammatory process may be limited to the rectum, extend proximally to include any contiguous segment, or involve the entire colon. Ulcerative colitis may be cured by total colectomy.

2. Symptoms and signs of IBD include diarrhea, fecal incontinence, rectal bleeding, abdominal pain, fatigue, fever, nausea, vomiting, arthralgia, abdominal tenderness, palpable abdominal mass (usually inflamed loops of bowel) and perineal disease. You may also have signs or laboratory findings indicating malnutrition, such as weight loss, edema, anemia, hypoalbuminemia, hypokalemia, hypocalcemia, or hypomagnesemia.

3. IBD may be associated with significant extraintestinal manifestations in a variety of body systems. These include, but are not limited to, involvement of the eye (for example, uveitis, episcleritis, iritis); hepatobiliary disease (for example, gallstones, primary sclerosing cholangitis); urologic disease (for example, kidney stones, obstructive hydronephrosis); skin involvement (for example, erythema nodosum, pyoderma gangrenosum); or non-destructive inflammatory arthritis. You may also have associated thromboembolic disorders or vascular disease. These manifestations may not correlate with the severity of your IBD. If your impairment does not meet any of the criteria of 105.06, we will consider the effects of your extraintestinal manifestations in determining whether you have an impairment(s) that meets or medically equals another listing, and we will also consider the effects of your extraintestinal manifestations when we determine whether your impairment(s) functionally equals the listings.

4. Surgical diversion of the intestinal tract, including ileostomy and colostomy, does not very seriously interfere with age-appropriate functioning if you are able to maintain adequate nutrition and function of the stoma. However, if you are not able to maintain adequate nutrition, we will evaluate your impairment under 105.08.

F. *How do we evaluate short bowel syndrome (SBS)?*

1. *Short bowel syndrome* (105.07) is a disorder that occurs when congenital intestinal abnormalities, ischemic vascular insults (for example, necrotizing enterocolitis, volvulus), trauma, or IBD complications require surgical resection of more than one-half of the small intestine, resulting in the loss of intestinal absorptive surface and a state of chronic malnutrition. The management of SBS requires long-term parenteral nutrition via an indwelling central venous catheter (central line); the process is often referred to as *hyperalimentation* or *total parenteral nutrition* (TPN). Children with SBS can also feed orally, with variable amounts of nutrients being absorbed through their remaining intestine. Over time, some of these children can develop additional intestinal absorptive surface, and may ultimately be able to be weaned off their parenteral nutrition.

2. Your impairment will continue to meet 105.07 as long as you remain dependent on daily parenteral nutrition via a central venous catheter for most of your nutritional requirements. Long-term complications of SBS and parenteral nutrition include abnormal growth rates, central line infections (with or without septicemia), thrombosis, hepatotoxicity, gallstones, and loss of venous access sites. Intestinal transplantation is the only definitive treatment for children with SBS who remain chronically dependent on parenteral nutrition.

3. To document SBS, we need a copy of the operative report of intestinal resection, the summary of the hospitalization(s) including: Details of the surgical findings, medically appropriate postoperative imaging studies that reflect the amount of your residual small intestine, or if we cannot get one of these reports, other medical reports that include details of the surgical findings. We also need medical documentation that you are dependent on daily parenteral nutrition to provide most of your nutritional requirements.

G. *How do we evaluate malnutrition in children?*

1. Many types of digestive disorders can result in malnutrition and growth retardation. To meet the malnutrition criteria in 105.08A, we need documentation of a digestive disorder with associated chronic nutritional deficiency despite prescribed treatment.

2. We evaluate the growth retardation criteria in 105.08B by using the most recent growth charts by the Centers for Disease Control and Prevention (CDC).

a. If you have not attained age 2, we use weight-for-length measurements to assess whether your impairment meets the requirement of 105.08B1. CDC weight-for-length charts are age- and gender-specific.

b. If you are a child age 2 or older, we use BMI-for-age measurements to assess whether your impairment meets the requirement of 105.08B2. BMI is the ratio of your weight to the square of your height. BMI-for-age is plotted on the CDC's gender-specific growth charts.

c. We calculate BMI using inches and pounds, meters and kilograms, or centimeters and kilograms. We must have measurements of your weight and height without shoes for these calculations.

d. We calculate BMI using one of the following formulas:

English Formula

$$BMI = \left(\frac{\text{Weight in Pounds}}{(\text{Height in Inches}) \times (\text{Height in Inches})} \right) \times 703$$

Metric Formula

$$BMI = \frac{\text{Weight in Kilograms}}{(\text{Height in Meters}) \times (\text{Height in Meters})}$$

Or

$$BMI = \left(\frac{\text{Weight in Kilograms}}{(\text{Height in Centimeters}) \times (\text{Height in Centimeters})} \right) \times 10,000$$

H. *How do we evaluate the need for supplemental daily enteral feeding via a gastrostomy?*

1. *General.* Infants and young children may have anatomical, neurological, or developmental disorders that interfere with their ability to feed by mouth, resulting in inadequate caloric intake to meet their growth needs. These disorders frequently result in the medical necessity to supplement caloric intake and to bypass the anatomical feeding route of mouth-throat-esophagus into the stomach.

2. Children who have not attained age 3 and who require supplemental daily enteral nutrition via a feeding gastrostomy meet 105.10 regardless of the medical reason for the gastrostomy. Thereafter, we evaluate growth impairment under 100.02, malnutrition under 105.08, or other medical or developmental disorder(s) (including the disorder(s) that necessitated gastrostomy placement) under the appropriate listing(s).

I. *How do we evaluate esophageal stricture or stenosis?* Esophageal stricture or stenosis (narrowing) from congenital atresia (absence or abnormal closure of a tubular body organ) or destructive escphagitis may result in malnutrition or the need for gastrostomy placement, which we evaluate under 105.08 or 105.10. Esophageal stricture or stenosis may also result in complications such as pneumonias due to frequent aspiration, or difficulty in maintaining nutritional status short of listing-level severity. While none of these complications may be of such severity that they would meet the criteria of another listing, the combination of impairments may medically equal the severity of a listing or functionally equal the listings.

J. *What do we mean by the phrase "consider under a disability for 1 year"?* We use the phrase "consider under a disability for 1 year" following a specific event in 105.02, 105.05A, and 105.09 to explain how long your impairment can meet the requirements of those particular listings. This phrase does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your impairment continues to meet a listing or is otherwise disabling. For example, if you have received a liver transplant, you may have become disabled before the transplant because of chronic liver disease. Therefore, we do not restrict our determination of the onset of disability to the date of the specified event. We will establish an onset date earlier than the date of the specified event if the evidence in your case record supports such a finding.

K. *How do we evaluate impairments that do not meet one of the digestive disorder listings?*

1. These listings are only examples of common digestive disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system. For example:

a. If you have hepatitis B or C and you are depressed, we will evaluate your impairment under 112.04.

b. If you have multiple congenital abnormalities, we will evaluate your impairment(s) under the criteria in the listings for impairments that affect multiple body systems (110.00) or the criteria of listings in other affected body systems.

c. If you have digestive disorders that interfere with intake, digestion, or absorption of nutrition, and result in a reduction in your rate of growth, and your impairment does not satisfy the criteria in the malnutrition listing (105.08), we will evaluate your impairment under the growth impairment listings (100.00).

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See § 416.926.) If your impairment(s) does not meet or medically equal a listing, you may or may not have an impairment(s) that functionally equals the listings. (See § 416.926a.) When we decide whether you continue to be disabled, we use the rules in § 416.994a.

105.01 *Category of Impairments, Digestive System*

105.02 *Gastrointestinal hemorrhaging from any cause, requiring blood transfusion* (with or without hospitalization) of at least 10 cc of blood/kg of body weight, and occurring at least three times during a consecutive 6-month period. The transfusions must be at least 30 days apart within the 6-month period. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

105.03 [Reserved]

105.04 [Reserved]

105.05 *Chronic liver disease,* with:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 105.00D5, and requiring hospitalization for transfusion of at least 10 cc of blood/kg of body weight. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least two evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or

2. Appropriate medically acceptable imaging or physical examination and one of the following:

a. Serum albumin of 3.0 g/dL or less; or

b. International Normalized Ratio (INR) of at least 1.5.

OR

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm^3.

OR

D. Hepatorenal syndrome as described in 105.00D8, with one of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or

2. Oliguria with 24-hour urine output less than 1 mL/kg/hr; or

3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

E. Hepatopulmonary syndrome as described in 105.00D9, with:

1. Arterial oxygenation (P_aO_2,) on room air of:

a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or

b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or

c. 50 mm Hg or less, at test sites above 6000 feet; or

2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

F. Hepatic encephalopathy as described in 105.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or

3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:

a. Asterixis or other fluctuating physical neurological abnormalities; or

b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or

c. Serum albumin of 3.0 g/dL or less; or

d. International Normalized Ratio (INR) of 1.5 or greater.

OR

G. End Stage Liver Disease, with:

1. For children 12 years of age or older, SSA CLD scores of 22 or greater calculated as described in 105.00D11a. Consider under a disability from at least the date of the first score.

2. For children who have not attained age 12, SSA CLD–P scores of 11 or greater calculated as described in 105.00D11b. Consider under a disability from at least the date of the first score.

OR

H. Extrahepatic biliary atresia as diagnosed on liver biopsy or intraoperative cholangiogram. Consider under a disability for 1 year following the diagnosis; thereafter, evaluate the residual liver function.

105.06 *Inflammatory bowel disease (IBD)* documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period;

OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or

2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or

3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

5. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter. (See 105.10 for children who have not attained age 3.)

105.07 *Short bowel syndrome (SBS),* due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter (see 105.00F).

105.08 *Malnutrition* due to any digestive disorder with:

A. Chronic nutritional deficiency despite continuing treatment as prescribed, present on at least two evaluations at least 60 days apart within a consecutive 6-month period, and documented by one of the following:

1. Anemia with hemoglobin less than 10.0 g/dL; or

2. Serum albumin of 3.0 g/dL or less; or

3. Fat-soluble vitamin, mineral, or trace mineral deficiency;

AND

B. Growth retardation documented by one of the following:

1. For children who have not attained age 2, multiple weight-for-length measurements that are less than the third percentile on the CDC's most recent weight-for-length growth charts, documented at least three times within a consecutive 6-month period; or

2. For children age 2 and older, multiple Body Mass Index (BMI)-for-age measurements that are less than the third percentile on the CDC's most recent BMI-for-age growth charts, documented at least three times within a consecutive 6-month period.

105.09 *Liver transplantation.* Consider under a disability for 1 year following the date of transplantation; thereafter, evaluate the residual impairment(s) (see 105.00D13 and 105.00J).

105.10 *Need for supplemental daily enteral feeding via a gastrostomy* due to any cause, for children who have not attained age 3; thereafter, evaluate the residual impairment(s) (see 105.00H).

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 7. Revise the authority citation for subpart I of part 416 to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

§ 416.924b [Amended]

■ 8. In § 416.924b(b)(3), remove the reference "§ 416.924a(m)(7) or (8)" and insert the reference "§ 416.926a(m)(6) or (7)" in its place.

§ 416.926a [Amended]

■ 9. In § 416.926a, remove paragraphs (m)(3) and (m)(10) and redesignate paragraphs (m)(4), (m)(5), (m)(6), (m)(7), (m)(8), and (m)(9) as paragraphs (m)(3), (m)(4), (m)(5), (m)(6), (m)(7), and (m)(8).

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October 19, 2007

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 512
Confidential Business Information; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–06–26140; Notice 2]

RIN 2127–AJ95

Confidential Business Information

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

ACTION: Final rule.

SUMMARY: This final rule addresses the confidentiality of certain information that manufacturers of motor vehicles and motor vehicle equipment submit to NHTSA pursuant to the early warning reporting (EWR) rule. The agency is establishing class determinations that certain categories of EWR information are confidential, based on Exemption 4 of the Freedom of Information Act (FOIA). These categories of EWR data are production numbers (other than for light vehicles), the numbers of consumer complaints, the numbers of warranty claims (warranty adjustments in the tire industry), the numbers of field reports, copies of field reports and common green tire identifier information. In addition, based on the privacy interests protected by FOIA Exemption 6, the rule includes a class determination encompassing the last six (6) characters of the vehicle identification numbers (VINs) which are reported in certain EWR submissions involving deaths and injuries. This final rule also clarifies the agency's general requirements regarding confidentiality markings in submissions in electronic media.

DATES: This final rule is effective on November 19, 2007. If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 3, 2007.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building Fourth Floor, Washington, DC 20590, with a copy to the DOT docket. Copies to the docket may be submitted electronically through the Federal E-Rulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324. The Docket room (ground floor Room W12–140, 1200 New Jersey Avenue, SE.) hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On October 31, 2006, NHTSA published a notice of proposed rulemaking (NPRM) regarding the confidentiality of certain early warning reporting (EWR) data submitted to the agency by manufacturers of motor vehicles and motor vehicle equipment. 71 FR 63738. In that notice, the agency proposed to create class determinations that specified EWR data would be confidential based on the criteria applicable to required submissions under Exemption 4 of the Freedom of Information Act (FOIA). In addition, some of the data in VINs would be confidential based on FOIA Exemption 6. The October 2006 NPRM also proposed to clarify requirements applicable to persons seeking confidential treatment for information contained on electronic media. In this final rule, the agency adopts the proposed class determinations and amends the submission process for requesting confidential treatment for information on electronic media. The background and genesis of this rulemaking is summarized below.

A. National Traffic and Motor Vehicle Safety Act

In 1966, Congress enacted the National Traffic and Motor Vehicle Safety Act (Safety Act) with the purpose of reducing traffic accidents and deaths and injuries to persons resulting from traffic accidents. 49 U.S.C. 30101.[1] Since it was amended in 1974, the Safety Act has contained a series of provisions that address motor vehicles and motor vehicle equipment that contain a potential or actual defect that is related to motor vehicle safety.[2]

The Safety Act requires a manufacturer to notify NHTSA and the vehicle or equipment owners if it learns of a defect and decides in good faith that the defect is related to motor vehicle safety. 49 U.S.C. 30118(c). This duty is independent of any action by NHTSA.[3] Ordinarily, a manufacturer's notice is followed by the manufacturer's provision of a free remedy to owners of defective vehicles and equipment. *See* 49 U.S.C. 30120. Collectively, the manufacturer's notice and remedy are known as a recall.

Congress also provided NHTSA with considerable investigative and enforcement authority. The Safety Act authorizes NHTSA to conduct investigations and to require manufacturers to submit reports to enable the agency to determine whether the manufacturer has complied with or is complying with the statute, including its duty to conduct recalls when warranted. 49 U.S.C. 30166(b), (e). An investigation may culminate in an order to the manufacturer to provide notification of a safety-related defect or a noncompliance to owners of the vehicle or equipment. 49 U.S.C. 30118(a), (b).

B. TREAD Act—Early Warning Reporting

For several decades preceding the enactment of the Transportation Recall Enhancement, Accountability, and

[1] Pub. L. 89–563, 80 Stat. 718. This preamble will use the current citations to the United States Code. In 1994, the Safety Act, as amended, was repealed, reenacted, and recodified without material change as part of the recodification of Title 49 of the United States Code. *See* Pub. L. 103–272, 108 Stat. 745, 1379, 1385 (1994) (repealing); *id.* at 745, 941–73 (1994) (reenacting and recodifying without substantive changes).

[2] Pub. L. 93–492, 88 Stat. 1470 (1974).

[3] *United States* v. *General Motors Corp.*, 574 F. Supp. 1047, 1049 (D.D.C. 1983).

Documentation (TREAD) Act of 2000,[4] the Safety Act provided for limited submissions of information by a manufacturer to NHTSA prior to the manufacturer's submission of a notice of a safety-related defect. *See* 49 U.S.C. 30118(c); 49 CFR part 573. Manufacturers were required to submit copies of technical service bulletins and other communications to the agency. *See* 49 U.S.C. 30166(f); 573.8 (1999); 66 FR 6532, 6533 (Jan. 22, 2001). NHTSA also received consumer complaints. At times, this information provided a basis for opening an investigation and at times it did not. This practical limitation on NHTSA's investigations manifested itself in 2000 when it was revealed that under the limited level of reporting then required, the agency had not been provided sufficient information to identify defects in Firestone tires mounted on Ford Explorers. 66 FR at 6534. There were numerous fatalities before NHTSA opened an investigation and Firestone conducted recalls of its tires.

In response to these and other shortcomings in the Safety Act, on November 1, 2000, Congress enacted the TREAD Act. The TREAD Act added provisions to the Safety Act that expanded the scope of the information manufacturers must submit to NHTSA prior to a manufacturer-initiated recall. In relevant part, the TREAD Act required the Secretary of Transportation to publish a rule setting out the early warning reporting requirements to enhance the agency's ability to carry out the Act. 49 U.S.C. 30166(m). In general, the TREAD Act authorized the agency to require manufacturers to submit information that may assist in the early identification of defects related to motor vehicle safety.

In July 2002, pursuant to the TREAD Act, NHTSA promulgated the Early Warning Reporting (EWR) rule. 67 FR 45822 (July 10, 2002).[5] Generally, the EWR rule required manufacturers of automobiles and other light vehicles. medium-heavy trucks and buses, motorcycles, and trailers that produce or sell 500 or more vehicles per year in any of these industry sectors and manufacturers of child restraints and tires (except as to relatively low production tire lines) to submit data regarding production numbers (cumulative total vehicles or equipment manufactured annually), incidents involving death or injury based on claims and notices, property damage claims, consumer complaints, warranty claims paid, and field reports on a quarterly basis. *See* 49 CFR 579.21–579.26. Collectively this information is referred to as EWR data. In this notice, we refer to the vehicle and tire manufacturers that report under 49 CFR 579.21–579.24 and 579.26 as larger manufacturers.[6] The information is submitted electronically to the agency in a standardized format. *See* 49 CFR 579.29.

More specifically, the categories of information on which these manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, trailers, tires and child restraints generally report under the EWR rule are:

- *Production.* These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model (or production) year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).
- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in a foreign country that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.
- *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.
- *Property damage claims.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.
- *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims.
- *Warranty claims.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they pay that are related to problems with certain specified components and systems. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.
- *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems. In addition, manufacturers must provide copies of field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers and product evaluation reports.

Tire manufacturers must also provide information on their common green tire lines:

- *Common green tires.* Tire manufacturers must identify tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.

C. Confidentiality of EWR Data

The EWR rule did not address the confidentiality of EWR data. It noted, however, that this issue would be considered as part of the proposed amendments to NHTSA's confidential business information rule. *See* 67 FR at 45866, n.6.

In July of 2003, NHTSA addressed the confidentiality of EWR data in its general rule on Confidential Business Information (CBI). 49 CFR Part 512, 68 FR 44209 (July 28, 2003). The 2003 CBI rule addressed the confidentiality of EWR information in a new Appendix C, which set forth class determinations treating certain EWR information as confidential based on FOIA Exemption 4. In particular, the rule determined that EWR data on production numbers (except light vehicles), consumer complaints, warranty claims, and field reports including copies of field reports, were confidential. 49 CFR Part 512 Appendix C (2003). The agency based these class determinations on the substantial competitive harm and impairment standards of FOIA Exemption 4. *See* 5 U.S.C. 552(b)(4); 49 CFR Part 512 App. C (2003). The 2003 CBI rule did not resolve the confidentiality of EWR data on deaths and injuries, or on property damage claims.

In April 2004, NHTSA amended the CBI rule in its response to administrative petitions for reconsideration of the July 2003 rule. 69

[4] Pub. L. 106–414, 114 Stat. 1800.

[5] Thereafter, NHTSA published amendments to the EWR rule. As used herein, the references to the EWR rule are to the rule as amended. The reader should note that the discussion of the EWR rule in this notice is a summary. The full text of the rule and associated **Federal Register** notices should be consulted for a complete description.

[6] Manufacturers other than larger vehicle and tire manufacturers and child restraint manufacturers have limited EWR obligations. *See* 49 CFR 579.27.

FR 21409 (April 21, 2004). Specifically, the agency added two class determinations to Appendix C. One class determination, based on FOIA Exemption 4, covered common green tire identifiers submitted by tire manufacturers under the EWR rule, 49 CFR 579.26(d). A second class determination, based on FOIA Exemption 6, covered the last six (6) characters of vehicle identification numbers (VINs) contained in EWR death and injury reports. *See,* e.g. 49 CFR 579.21(b)(2).

D. Litigation Challenging the 2003–2004 CBI Rule

Public Citizen filed a lawsuit challenging NHTSA's class determinations in Appendix C to 49 CFR Part 512. The Rubber Manufacturers Association (RMA) intervened and asserted, among other things, that in light of a disclosure provision in the TREAD Act,[7] NHTSA was precluded from disclosing all EWR data, subject to a limited exclusion. In a March 31, 2006 decision, the United States District Court for the District of Columbia addressed some of Public Citizen's claims. The Court upheld the agency's authority to promulgate the regulation making categorical confidentiality determinations for classes of EWR data. *Public Citizen, Inc.* v. *Mineta*, 427 F. Supp. 2d 7, 12–14 (D.D.C. 2006). The Court concluded, however, that NHTSA had not provided adequate notice and an opportunity to comment on those determinations in the proposed rule. *Id.* at 14–17. The Court remanded the matter to NHTSA but did not address the parties' other claims. *Id.* Thereafter, in a supplemental opinion, the Court addressed RMA's claim that the disclosure of EWR data was precluded by the disclosure provision in the TREAD Act and FOIA Exemption 3, 5 U.S.C. 552(b)(3), which provides for the withholding of information when disclosure of that information is prohibited by another statute.[8] *Public Citizen, Inc.* v. *Mineta*, 444 F. Supp. 2d 12 (D.D.C. 2006). The District Court held that the TREAD Act's disclosure provision was not an Exemption 3 statute. RMA appealed the District Court's judgment to the U.S. Court of Appeals for the District of Columbia Circuit (No. 06–5304) and that case is currently pending.

II. 2006 Notice of Proposed Rulemaking

In light of the District Court's decisions, on October 31, 2006, NHTSA published an NPRM addressing the confidentiality of certain EWR information. In short, the agency proposed class determinations that production numbers for reporting sectors other than light vehicles, consumer complaints, warranty claims (warranty adjustments in the tire industry), field reports (including copies of field reports) and common green tire identifier information would be confidential. This proposal was based on the criteria in FOIA Exemption 4. 71 FR at 63741–42. Under Exemption 4, where the submission of information to the government is mandatory, as is reporting required by the EWR rule, the information is confidential if its disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained or to impair the Government's ability to obtain necessary information in the future. This proposal was consistent with the 2003 and 2004 rules, and was based on the docket for that rulemaking. *See* NHTSA Docket No. 2002–12150 (*available at http://dms.dot.gov* which is being transferred to *http://www.regulations.gov).*

More particularly, in formulating the proposal, NHTSA considered comments from a diverse cross-section of the automotive industry and a non-governmental organization. Commenters included the Automotive Occupant Restraints Council (AORC), Bendix Commercial Vehicle Systems (Bendix), Blue Bird Body Company (Blue Bird), Enterprise Fleet Services (Enterprise), Harley-Davidson Motor Company (Harley-Davidson), the Juvenile Products Manufacturers Association (JPMA), the Motor and Equipment Manufacturers Association and the Original Equipment Suppliers Association (MEMA/OESA), Hella North America (Hella) (which primarily referred to the comments from MEMA/OESA), the Motorcycle Industry Council, the Tire Industry Association (TIA), Utilimaster Corporation (Utilimaster), WABCO North America (WABCO), and Workhorse Custom Chassis (Workhorse). NHTSA also considered comments by Public Citizen and its litigation group.

As in the previously remanded rule, the agency's October 2006 NPRM also proposed creating a class determination for the last six (6) characters of VINs of vehicles allegedly involved in deaths and injuries reported in the EWR data. *See* 71 FR at 63745 and 69 FR at 21416. This was based on Exemption 6 of the FOIA, which provides for withholding information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. We noted our ability to obtain personal information regarding individual owners and past owners using a VIN and expressed our concern over the disclosure of full VINs of vehicles reportedly involved in an event resulting in an injury or fatality. Notwithstanding this limited redaction, we noted that the public would be able to identify the make, model, and model year of the vehicle involved in an injury- or fatality-producing incident reported through EWR data.

The NPRM published in October of 2006 explained that we were not proposing class determinations of confidentiality of other categories of EWR information, namely, information on incidents involving deaths and injuries, and on property damage claims. *See id.* at 63745–46. Further, the agency noted that the issue of whether the TREAD Act disclosure provision qualifies as a FOIA Exemption 3 statute was pending in the Court of Appeals and indicated that the agency would act in a manner consistent with that ruling once issued.

Apart from the confidentiality of EWR data, the NPRM proposed clarifications to the submission procedures to address recurring problems encountered by the agency with requests for confidential treatment contained on electronic media such as CDs or DVDs.

In response to the October 2006 NPRM, a number of trade associations representing a variety of automotive sectors, companies, consumer groups and individuals submitted comments. The industry commenters included the Alliance of Automobile Manufacturers (the Alliance), Association of International Automobile Manufacturers (AIAM), General Motors North America (GM), National Marine Manufacturers Association (National Marine), Nissan North America (Nissan), Rubber Manufacturers Association (RMA), Truck Manufacturers Association (TMA), and Utility Trailer Manufacturing (Utility)—all of which generally supported the proposed class determinations based on FOIA Exemptions 4 and 6.

[7] 49 U.S.C. 30166(m)(4)(C). In reference to information provided by manufacturers pursuant to the EWR rule, this provision states: "*Disclosure.* None of the information collected pursuant to the final rule promulgated under paragraph (1) [the EWR rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121."

[8] Exemption 3 applies when information is "specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld". 5 U.S.C. 552(b)(3).

Non-industry commenters included numerous individual consumers and groups (Public Citizen, American Association for Justice (AAJ), and Quality Control Systems (Quality Control)).[9] These commenters generally criticized the proposed class determinations and asked that the agency withdraw its proposal. Many individual commenters also appear to have mistakenly believed that the proposal would affect information (*e.g.*, consumer complaints and information produced during defect investigations) that is already made available to the public through the agency's Web site.

III. The Final Rule

The rule that NHTSA is publishing today creates class determinations that EWR data on production numbers (other than for light vehicles), the numbers of consumer complaints, warranty claims and field reports, copies of field report documents, and common green tire identifier information are confidential. These class determinations, which are included in a new Appendix C to 49 CFR Part 512, are based on FOIA Exemption 4. Second, the rule creates a class determination based on FOIA Exemption 6 that covers the last six (6) characters of VINs contained in EWR reports pertaining to incidents involving death or injury. These 6 characters would be redacted from injury or fatality information contained in EWR submissions. Thus, absent an individual manufacturer's request for confidentiality for particular EWR death and injury reports, these reports would be released to the public, except for the last 6 characters of a VIN. This class determination is in a new Appendix D to 49 CFR Part 512.

The agency also is modifying the procedural provisions of 49 CFR 512.6 with respect to the submission of information contained on electronic media for confidential treatment. The rule adopts a slightly modified version of the changes proposed in our NPRM by permitting some flexibility in the identification of confidential information and pagination requirements. Details of the new procedures are discussed under Section VI. *Identifying Confidential Business Information Located in Electronic Files.*

Finally, this rule updates the agency's contact information to reflect the Department of Transportation's new address. This change is incorporated into 49 CFR 512.7.

Our rationale for the final rule follows.

A. Determinations of the Confidentiality of EWR Data Are Based on FOIA Exemptions 4 and 6

The confidentiality of most EWR data is based on FOIA Exemption 4, 5 U.S.C. 552(b)(4). FOIA Exemption 4 provides for the withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential". Under Exemption 4, the standard for assessing the confidentiality of information that parties are required to submit to the government is whether "disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial competitive harm to the competitive position of the person from whom the information was obtained." [10] *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). These two alternative tests are referred to as the impairment prong and the competitive harm prong.

Under the competitive harm prong of the *National Parks* test, there must be "actual competition and a likelihood of substantial competitive injury" from disclosure of the information. *CNA Financial Corp.* v. *Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987). This standard requires only that disclosure of information would "likely" cause competitive harm, for whatever reasons. *McDonnell Douglas Corp.* v. *U.S. Dept. of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004); *see also Occidental Petroleum Corp.* v. *SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989). Under this prong, the agency assesses the likelihood of substantial injury; it does not make that assessment and then further balance it against other matters such as the public's interest in the information.

In fact, the D.C. Circuit has firmly rejected the contention that under Exemption 4 a court should gauge whether the competitive harm to an entity submitting confidential information from the public disclosure of the information is outweighed by the strong public interest in the information. As discussed below, in *Public Citizen Health Research Group* v. *FDA*, 185 F.3d 898, 904–05 (D.C. Cir. 1999), the court held that the appropriate balancing is reflected in the test of confidentiality set forth in *National Parks*. There is no further balancing of the public's interest in the information.

B. Approach—Class Determinations v. Individual Assessments

As explained in the NPRM, the District Court in *Public Citizen, Inc.* v. *Mineta*, 427 F.Supp. 2d 7, 12–14 (D.D.C. 2006), ruled that NHTSA had the authority to promulgate the 2003 CBI rule making categorical confidentiality determinations for classes of EWR data. *See* 71 FR at 63740. Consistent with the District Court's opinion, the agency proposed a rule to address the confidentiality of EWR information through specific class determinations based on FOIA Exemptions 4 and 6. *Id.* We pointed out that this proposal was largely similar to our prior determinations. 71 FR at 63740 and 63741.

Both industry and non-industry commenters provided views on the proposed adoption of class determinations. Industry comments (e.g., AIAM, the Alliance, and Nissan) were predicated in part on the recurring nature of early warning reporting under 49 CFR Part 579. In connection with each quarterly submission of EWR data, manufacturers would request confidential treatment for the EWR data and would provide the same justifications in each quarterly request. This result, the manufacturers maintained, would create significant administrative burdens for both the submitting entities and the agency. Nissan added that such a burden was not anticipated by the EWR rule and would be inconsistent with the TREAD Act's premise against creating undue burdens in implementing the EWR program. *See also* H.R. Rep. No. 106–954, at 14 (Oct. 10, 2000) (pointing out that the agency's EWR rule "may not impose requirements that are unduly burdensome to a manufacturer, taking into account the manufacturer's cost of complying with such requirements").

Non-industry commenters criticized the agency's proposed class determination approach. For example, Quality Control suggested that the agency apply a presumption of non-confidentiality (i.e., of disclosure) to whatever class determinations that the

[9] The vast majority of individuals who commented appeared to believe that the agency, in light of the class determinations, would cease making public information pertaining to defect investigations and recalls. The class determinations adopted today address only EWR data and do not pertain to other information that the agency currently discloses to the public. The agency will continue to make this information publicly available.

[10] The term "trade secrets" has been narrowly defined by the Court of Appeals for the District of Columbia Circuit for the purpose of FOIA Exemption 4 as encompassing "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

agency adopts. Public Citizen asserted that the District Court's holding regarding the agency's authority to promulgate class determinations based on FOIA exemptions was in error. Thus, Public Citizen disputed the legality of creating class determinations. It also pointed out that the agency had previously proposed the creation of presumptively nonconfidential categories that in Public Citizen's view would cover complaints, property damage and paid warranty claims. In comments to the agency's prior rulemaking, Public Citizen expressed support for class determinations that applied a presumption in favor of broad disclosure of EWR information.

As noted in the summary of this rule, NHTSA has decided to promulgate class determinations on the confidentiality of some but not all categories of EWR data. In adopting this approach, we have considered a number of matters. First, we have considered whether class determinations may lawfully be adopted. As explained by the District Court, NHTSA may adopt categorical rules to manage the tasks assigned to it by Congress under the TREAD Act. *Public Citizen,* 427 F. Supp. 2d at 13.

Second, we have identified and assessed the alternatives. One alternative is to require manufacturers to submit individual requests for confidentiality for each quarterly submission of EWR data. A second alternative is to adopt binding class determinations. Class determinations could be adopted on a category-by-category of EWR data basis, where warranted, as was proposed in the October 2006 NPRM and had been adopted in the rule that was remanded by the District Court. A variation on this approach, which was not proposed, would be class determinations that cover all EWR data. A third alternative is presumptive categorical determinations of confidentiality.

In considering the alternatives, two significant concerns are the provision of direction to the regulated entities and predictability. About 500 manufacturers regularly report EWR data. One general concern is providing direction to them regarding the confidentiality of EWR data. A related and more specific concern is that the agency convey its views, not only on procedures, but on the substance of what they must show in seeking confidentiality and/or on whether some or all of the information is confidential.

Another concern is consistency. As detailed in the EWR rule, there are common data elements in the EWR submissions. NHTSA is concerned that it provides consistent determinations of the confidentiality of data reported on the common data elements. The common data elements in EWR submissions exist both across and within EWR categories of vehicle and equipment manufacturers. For example, most categories of larger manufacturers regulated under the EWR rule submit consumer complaint data. *See* 49 CFR 579.21(c) (light vehicles), 579.22(c) (medium heavy vehicles and buses), 579.23(c) (motorcycles), 579.24(c) (trailers).[11] And most reporting sectors submit warranty claims data. *See* 49 CFR 579.21(c) (light vehicles), 579.22(c) (medium heavy vehicles and buses), 579.23(c) (motorcycles), 579.24(c) (trailers), 579.26(c) (warranty adjustments in the tire industry).[12] All the categories of vehicle manufacturers submit field reports, as do child restraint manufacturers. *See* 49 CFR 579.21(c) (light vehicles), 579.22(c) (medium heavy vehicles and buses), 579.23(c) (motorcycles), 579.24(c) (trailers); 579.25(c) (child restraints).

Within the categories of manufacturers that submit EWR data, there are common data elements. For example, all light vehicle manufacturers report on the same 18 different systems and components. These include, for example, steering systems, air bags, seat belts and wheels. *See* 49 CFR 579.21(b)(2), (c). Child restraint manufacturers report on the same elements such as buckles and harnesses, and handles. 49 CFR 579.25(b)(2), (c). And tire manufacturers report on the same items, such as the tread and sidewall. 49 CFR 579.26(b)(2), (c). In addition, most of the vehicle categories include some of the same and similar reporting elements, including brakes, electrical, exterior lighting, tires, and wheels. *See* 49 CFR 579.21(c) (light vehicles), 579.22(c) (medium heavy vehicles and buses), 579.23(c) (motorcycles), 579.24(c) (trailers). The data elements are largely the same.

Third, the agency is concerned about the burden on the manufacturers in submitting individual requests for confidentiality, and the burden on the agency of processing individual requests and ruling on them. Also, if NHTSA staff denies a request, the party may petition for administrative reconsideration by NHTSA's Chief Counsel, who issues the final agency action on the request. 49 CFR 512.19. This creates additional burdens on persons seeking confidentiality and on the agency.

NHTSA is also concerned about other aspects of the administration of its programs. For example, the agency considers the burdens on small businesses.

If NHTSA were simply to require individual requests for confidential treatment with the submission of EWR data on a quarterly basis under 49 CFR Part 512 without the Appendices on the confidentiality of EWR data (Appendices C and D in today's rule), a large number of manufacturers would submit requests for confidentiality, without meaningful direction from the agency. In the absence of the direction that would be provided by a class determination, manufacturers likely would submit a wide variety of requests. They would be written in different ways (as requests under 49 CFR 512.8 now are), with a broad range of statements of fact and opinion, and rationales. NHTSA would make ad hoc determinations of the confidentiality of the EWR data for which confidentiality was requested. Some requests would meet the standards for confidential treatment under Exemption 4 of the FOIA, and some would not. Agency denials of requests likely would be followed by requests for reconsideration. The process would be anything but orderly.

Moreover, there would be a large number of submissions. Based on the assumption that almost all of the 500 larger manufacturers that regularly submit EWR data would request confidentiality on a quarterly basis, there would be about 2000 requests for confidential treatment of EWR data per year.

The EWR submissions include separate data entries for numerous makes/models/model years and systems and components, and the amount of information is substantial. Since the inception of the EWR rule, NHTSA has received a large volume of data and documents from reporting manufacturers. For the period from 2004 through the end of 2006, the agency received millions of items of aggregate data from the approximately 500 entities that regularly report EWR data to the agency.[13] From the approximately 60 light vehicle manufacturers who regularly submit EWR data, the agency has received information pertaining to nearly 163 million warranty claims, nearly 9.5 million consumer complaints, over 5.8 million field reports, and over half a million distinct field report

[11] *See also* 49 CFR 579.21(c) (child restraint manufacturers report combined consumer complaints and warranty claims).

[12] *See* previous footnote.

[13] The term "aggregate data" refers to the quarterly submissions of the numbers of paid warranty claims, consumer complaints, field reports, and property damage claims received by the agency.

documents. Manufacturers in other EWR reporting sectors, in addition to reporting detailed quarterly production data, likewise submitted large amounts of data. Medium-heavy bus and truck manufacturers submitted information regarding over 8.6 million warranty claims, nearly 277,000 complaints, over 301,000 field reports, and nearly 20,000 distinct field report documents; trailer manufacturers submitted information covering over 1.3 million warranty claims, nearly 77,000 complaints, over 20,000 field reports, and over 400 distinct field report documents; and motorcycle manufacturers provided nearly 889,000 warranty claims, nearly 41,000 complaints, over 26,000 field reports, and nearly 26,000 distinct field report documents. Motor vehicle equipment manufacturers submitted large volumes of EWR data as well. Child restraint manufacturers submitted information on over 50,000 complaints and warranty claims, over 8,500 field reports, and provided over 4,500 distinct field report documents. Tire manufacturers provided data on over 1.3 million warranty adjustment claims.

If the agency were to review requests for confidentiality from individual manufacturers, inevitably there would be inconsistent resolutions on the confidentiality of data submitted in the numerous data elements in EWR reports. These different outcomes would stem from the different approaches in manufacturers' requests and different assertions in them, different agency staff reviewing different requests, and pressure to resolve requests in order to minimize the inevitable backlog, discussed below. Thus, a third problem would be consistency.

In addition, a requirement that manufacturers submit individual requests for confidentiality would pose a substantial burden on the manufacturers and the agency. As noted above, there likely would be about 2000 requests for confidentiality of EWR data per year. Most would cover the range of EWR data, including production data, consumer complaints, warranty claims and field reports. Some, such as would be expected from Goodyear based on its historic practices,[14] would cover EWR information on deaths and injuries and property damage claims, which are not covered by today's rule. The preparation of these requests would impose a substantial burden on the manufacturers. The burden would fall disproportionately on the manufacturers that are not comparable in size to companies such as Toyota and General Motors, and have limited to no experience in requesting confidentiality from NHTSA. The preparation of the initial requests would be particularly burdensome. Ultimately, NHTSA would deny some of these requests and manufacturers would file petitions for reconsideration. Over time, we expect that most manufacturers, perhaps with outside assistance, would likely be able to submit a request for confidentiality that NHTSA would grant. In the long run, the process would become routinized. At this stage, a manufacturer would largely repeat what it had said in a previous request for confidentiality of EWR data that the agency had granted, making that and subsequent quarterly individual assessments duplicative. As a result, requiring EWR data submitters to provide a detailed written justification for each quarterly submission would be difficult to justify, as it would impose burdens on manufacturers that are unnecessary given the availability of class determinations under the District Court's decision in *Public Citizen*.

In contrast to these projected 2000 requests, the agency normally receives approximately 450 requests for confidential treatment annually.[15] A portion of these are addressed with limited effort because they involve information submitted voluntarily, which is subject to an objective standard that ordinarily is met based on a limited review.[16] Adding the 2000 requests for confidential treatment that would likely accompany EWR submissions, on an annual basis, would significantly add to the burden faced by the agency.

The agency's experience in processing and responding to confidentiality requests, such as those submitted during the course of enforcement investigations, provides a foundation for an assessment of the burden and its implications. A comparison of the expected number of EWR submissions to the number of confidentiality requests that manufacturers now submit, which do not involve EWR data, while taking content to account, indicates that if the agency were to attempt to process individualized requests for confidentiality of EWR data from each or most manufacturers that regularly report EWR data, the agency would be overwhelmed. There would be considerable additional work from logging in, to assigning and controlling assignments, to analyzing the requests, to preparing draft letters, to review, to preparation and execution of final letters to logging them out. There would also be an overall management burden. There are no available resources to do this work. A backlog would develop and delays in responding to requests for confidentiality of EWR data and other requests for confidentiality would ensue. Requests for confidentiality that likely would have merit and those that likely would not be favorably received by the agency would be caught in the backlog. Consistent with our customary practices, the information would be withheld until the agency decides whether it is confidential. Disclosure to the public of information, including both EWR and non-EWR information, that is the subject of a request for confidentiality but that ultimately is determined not to be entitled to be withheld under Exemption 4 would be hindered and delayed. This likely would include at least some EWR data on deaths and injuries. Based on historical actions, it likely would include some information submitted by manufacturers in defect investigations. Ultimately, the public interest would be impacted. Another effect would be the likely diversion of some resources from other agency safety efforts, including pursuing other enforcement activities, in order to mitigate the delay.[17]

In view of the foregoing, requiring and processing individual requests for confidential treatment for all EWR data is not a viable alternative.

A second alternative is to proceed by binding rule. If NHTSA were to proceed by issuance of class determinations, the agency would take advantage of the benefits of rulemaking. Interested parties would know NHTSA's assessment of the confidentiality of most of the EWR data.[18] The Supreme Court has long recognized the general preference for rulemaking over ad hoc adjudications. In *SEC* v. *Chenery Corp.* 332 U.S. 194, 202 (1947), the Court observed that since an agency, unlike a court, does have the ability to make new

[14] Goodyear submits quarterly requests for confidentiality of EWR data notwithstanding a stay pending a decision by the court on the RMA claim that the TREAD Act is a FOIA Exemption 3 statute. These requests provide insight into the nature of requests for the confidentiality of certain EWR data.

[15] This number was derived from the number of requests for confidential treatment that the agency has received over the past three calendar years and the expectation that we will receive requests for confidentiality of EWR information that would not be resolved by this rulemaking.

[16] *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (D.C. Cir. 1992).

[17] Public Citizen, within the context of disclosing EWR data, noted that "[t]he categorical disclosure of documents and data obtained under the early warning system is essential for the proper functioning of the early warning rule".

[18] The confidentiality of EWR data on deaths, injuries and property damage claims is not resolved by today's rule. Most manufacturers have not reported claims for deaths. Of those that have, NHTSA expects that most manufacturers, except tire companies, will not submit individualized requests for confidentiality.

law prospectively through the exercise of its rulemaking powers, it has less reason to rely upon ad hoc adjudication to formulate new standards of conduct. The Court recognized that the function of implementing the act should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future.

Binding determinations for EWR data are appropriate mechanisms to address the confidentiality of the EWR data report submissions. The submissions are standardized. The EWR reports contain identical informational elements for each regulated manufacturer category under the EWR rule. *See* 49 CFR Part 579, Subpart C. EWR reports are submitted pursuant to standardized electronic reporting templates that are used repeatedly from reporting period to reporting period. Each manufacturer in a regulatory category reports on the same systems and components. Each quarterly report provides a snapshot of that manufacturer's experience for each of the standard informational elements, making these submissions identical with respect to the nature of their content between reporting periods.

Binding determinations eliminate the problems with ad hoc determinations. They provide direction to the regulated community. They assure consistency. They avoid resource burdens, particularly for small businesses. They eliminate the substantial workload that the agency would face in processing and addressing requests for confidentiality. They also avoid a substantial backlog on processing of requests for confidentiality that impacts not only EWR data but other information submitted to NHTSA as well. This would result in quicker disclosure to the public of information that is not confidential. This is in the public interest.

The District Court recognized the suitability of adopting class determinations when it ruled that limited categorical rules that address the confidentiality of EWR data are necessary "to allow the agency to administer the EWR program effectively," *Public Citizen*, 427 F. Supp. 2d at 13, and that the agency was "justified in making categorical rules to manage the tasks assigned to it by Congress under the TREAD Act." *Id.* Consistent with this approach, the agency is adopting an appropriate method to help it manage the EWR program while satisfying its obligations under the FOIA. By adopting class determinations, the agency ensures that it applies a consistent and reliable approach when addressing the treatment of EWR data. Commenters on both sides of this issue also recognize the value of class determinations but each favors class determinations that result in opposite results—disclosure or withholding.

A third alternative is presumptive class determinations. In the October 2006 NPRM, we explained the practical differences between adopting "binding" as opposed to "presumptive" determinations. Binding determinations would alleviate the need for submitters to provide a formal written request for confidentiality and supporting justification, whereas presumptive determinations would still require submitters to provide a written request and supporting justification pursuant to 49 CFR Part 512. 71 FR at 63745 n. 19. The agency currently uses presumptive determinations for certain classes of information detailed in Appendix B of 49 CFR Part 512.

Presumptive determinations are a middle ground between ad hoc determinations and class determinations. In our view, presumptive determinations of the confidentiality of EWR data are inappropriate. While a presumptive determination would provide direction to the regulated community and the public and should avoid inconsistent rulings on the confidentiality of the EWR data submitted in satisfaction of EWR information requirements, it would not eliminate the requirement for individualized requests for confidentiality of EWR data. Since the elements and the basis for withholding them would be the same, individualized requests for confidentiality of EWR data would, as a practical matter, be unnecessary. Thus, they would impose an unnecessary burden on manufacturers. Also, the agency would face a substantial burden in processing requests for confidentiality under the presumptive determination alternative.[19]

The EWR data differ from the presumptive classes in 49 CFR Part 512 Appendix B in important respects. The presumptive class determinations in Appendix B cover information that has limiting factors such as a finite period of time for which confidentiality is sought or after which it ends (e.g., new product plan information for the upcoming model year expires once that product arrives or becomes public knowledge). Additionally, when reviewing requests for confidential treatment covering new product information (e.g., introduction of a new model) the agency not infrequently discovers that a manufacturer's media center has already publicly released that information, which makes it necessary for the agency to check the accuracy of a given confidentiality request. As a result, the nature of the information covered by Appendix B requires individualized agency review to ensure that non-confidential information is readily disclosed to the public. The EWR information (other than death, injury and property damage claims data, which are not covered) does not raise these concerns.

C. Class Determinations Based on FOIA Exemption 4

Exemption 4 of the FOIA covers information in federal agency records that is commercial or financial information obtained from a person that is privileged or confidential. EWR information. 5 U.S.C. 552(b)(4).

The terms "commercial" or "financial" information are given their ordinary meanings. *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Records are commercial so long as a submitter has a commercial interest in them. *Id.* EWR data meet this element of Exemption 4.[20]

Second, the information must be obtained from a "person." The word "person" encompasses business establishments, including corporations. *See FlightSafety Servs.* v. *Dep't of Labor*, 326 F.3d 607, 611 (5th Cir. 2003). EWR data is obtained from manufacturers, which are corporate business establishments. Thus, EWR data is obtained from persons within the meaning of Exemption 4.

Third, the information must be confidential.[21] As noted above, in *National Parks* the Court declared that the term confidential should be read to protect governmental and private interests in accordance with a two part test: commercial or financial matter is "confidential" for the purposes of Exemption 4 if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial competitive harm to the competitive position of the person from

[19] Public Citizen had suggested presumptions in favor of disclosure. In view of the general thrust of disclosure under FOIA in the absence of an exemption, this is not meaningful.

[20] See the discussion of the categories of EWR information below. Those discussions demonstrate that the manufacturers have a commercial interest in the data.

[21] Alternatively, privileged information may be withheld under Exemption 4. EWR data is not privileged. *See* 49 CFR 579.4(c) (definition of field report).

whom the information was obtained. 498 F.2d at 770.[22]

Actual competitive harm need not be demonstrated for the purposes of the competitive harm prong. Rather, actual competition and a likelihood of substantial competitive injury is all that need be shown. *CNA Financial Corp.* v. *Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987). Vehicle and equipment manufacturers that submit EWR data operate in a highly competitive environment that is expected to become even more competitive.[23] There is competition for sales.[24] The industry is subject to a variety of competitive factors, including costs, competition in consumer-based surveys, and production differences.[25]

We now turn to certain categories of information that manufacturers must submit under the EWR rule.

1. Production Numbers

The EWR rule requires larger volume manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, trailers and tires and all child restraint manufacturers to submit production figures stating the number of vehicles, tires and child restraint systems, generally by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). See 49 CFR 579.21(a), 579.22(a), 579.23(a), 579.24(a), 579.25(a), 579.26(a).

In the NPRM, NHTSA proposed to make a class determination that production figures in EWR data for motor vehicles, other than light vehicles, and for child restraints and tires would not be released to the public. The agency based this proposed class determination on the competitive harm prong of FOIA Exemption 4, as interpreted in *National Parks*.[26] 71 FR at 63742.

Numerous parties have provided information to NHTSA on the question whether the disclosure of EWR production data, other than for light vehicles, would be likely to cause the manufacturer submitting the data to suffer competitive harm from the use of the information by competitors. The parties have addressed a number of related issues including whether EWR production data from reporting sectors other than light vehicles is publicly available and the consequences of the release of this production information, as well as the potential benefits of releasing it.

Industry commenters stated that the production information was not publicly available in the detail that submitters must provide pursuant to the EWR rule.[27] Non-industry groups did not show otherwise.

The Truck Manufacturers Association (TMA) noted that that medium-heavy truck manufacturer EWR production data are detailed by model. They provide a compendium of detailed production data revealing the production history and sales trends for each individual model over time. TMA explained that these data can provide valuable insights into a manufacturer's production and marketing strategies. Since truck manufacturers offer a variety of different model lines, if the production data were released, competitors would gain valuable insights into the marketplace performance of a particular model or group of models without bearing any market risk. Competitors could analyze a reporting manufacturer's production data for all or select models to reach conclusions about a company's production and marketing strategies, production capacities, customer preferences and other commercially valuable information not otherwise obtainable. Using this information, TMA asserted, manufacturers can chart the strengths and weaknesses of their competitors' businesses within specific make, model and model years. The competitive impact of the disclosure of such information is of particular significance to medium truck producers since their collective customer base consists largely of fleet purchasers. A manufacturer can use medium-heavy vehicle production data to react more quickly to its competitors by changing its model offerings and shifting its sales and marketing strategies while avoiding the substantial costs and risks associated with new product development.[28] TMA used an example to make its point:

Manufacturer A offers a medium-duty truck equipped with a diesel engine as standard equipment, and is considering whether to offer an optional gasoline engine on this model. Manufacturer A could access the EWR data of its competitors, identify similar models, and track their sales of similar vehicles equipped with gasoline engines to determine (i) its competitors' production capacity for such vehicles, (ii) the market acceptance for the gasoline option at

[22] Impairment to the Government's ability to obtain this information in the future serves as an independent basis for withholding under Exemption 4. *See Notional Parks*, 498 F.2d at 770. The case law also strongly points to the availability of a "third prong" under Exemption 4—that of protecting other Governmental interests, such as compliance and program effectiveness. This third prong has been recognized, but not formally adopted, by the D.C. Circuit. *See Criticol Moss* v. *NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (noting that Exemption 4 can protect interests beyond impairment and competitive harm). *See olso 9 to 5 Org. for Women Office Workers* v. *Bd. of Governors of the Fed. Res. System*, 721 F.2d 1, 11 (1st Cir. 1983) (adopting a third prong under Exemption 4 based on the Government's interest in administrative efficiency and effectiveness).

[23] *See, e.g. GM Looks to Future*, USA TODAY, at 10A (Feb. 7, 2007) (observing that the changing auto industry and fierce competition are forcing GM to undergo structural changes), Micheline Maynarc, *Car Ports Maker Moves to Breok its Union Deols*, NY TIMES, April 1, 2006, at A1 (noting increasingly stiff competition in the U.S. auto market), *ond* Joann Muller, *Autos: A New Industry*, BUSINESSWEEK, July 15, 2002, at 98 (reporting on the changing U.S. auto market as "intense" competition changes the shape of the auto industry).

[24] *See* comments of the Alliance and others on competition, discussed below under consumer complaints.

[25] *See, e.g. Ford Aheod on Cost Savings Torget for Materials*, REUTERS, Mar. 16, 2007 (available at *http://www.autonews.com*) (noting challenges to Ford's ability to achieve future cost savings), Tony Lewin, *Nissan Factory Expertise Will Boost Laguna Quolity*, AUTOMOTIVE NEWS, Oct. 30, 2006 (available at *http://www.autonews.com*) (describing implementation of Nissan-developed quality control systems into Renault-manufactured vehicles), *ond Domestics Gain in Quality Derby*, AUTOMOTIVE NEWS, Aug. 14, 2006 (available at *http://www.outonews.com*) (reporting improvements by U.S. domestic automobile manufacturers in J.D. Power and Associates' Vehicle Dependability Study results).

[26] The basis for excluding EWR production data on light vehicles ("any motor vehicle, except a bus, motorcycle, or trailer, with a gross vehicle weight rating of 10,000 lbs or less," 49 CFR 579.4) from the class determination on confidentiality, as noted in the NPRM, is that those data are publicly available. Information that is already publicly available cannot be withheld by an agency under Exemption 4. *Niagara Mohowk Power Corp.* v. *Dep't of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999). We note that there are limits to the production information on light vehicles that is publicly available and which therefore is not withheld. The agency has granted confidential treatment for data on production of light vehicles with particular consumer features.

[27] For example, some manufacturers' total production of tires is publicly available, but the breakdown by model, size and production in a specified period is not. Vehicle production data that are available, other than for light vehicles, are limited and do not approach the same level of detail that these submitters provide to the agency in their EWR submissions. *See* Harley-Davidson Form 10–K Annual Report at 31 (Feb. 2, 2007) (stating production plans for 2007 by total motorcycle production). *See olso http://www.jamo.org* (offering total production numbers for individual Japanese motorcycle manufacturers).

[28] Manufacturers not only withhold this information from their competitors but also from their own suppliers. *See* Steve Konicki, *Just-In-Time Autos*, Techwebnews, 2001 WLNR 3151365 (May 7, 2001) (reporting that Ford Motor Company does not share its production data regarding medium and heavy truck applications with one of its largest diesel engine suppliers—International Truck and Engine Corporation). It is also commonly known that sales numbers, which closely track production numbers, are commercially sensitive data that companies do not routinely disclose. As an example of this practice, ArvinMeritor—a large supplier of various vehicle components—declined to disclose its diesel engine sales data, citing the data's competitively sensitive nature. Transcript of ArvinMeritor, Inc. Analyst Meeting at 38 (Dec. 22, 2005).

given points in time, and (iii) customer preference trends over time. Based upon this information, Manufacturer A can decide whether to offer this option before it invests money and other resources, and without bearing the same market risk and uncertainties as its competitors. (A similar analysis could be conducted model-by-model to evaluate the market acceptance of various vehicle configurations and features.)

Utilimaster, a final stage manufacturer of walk-in vans for parcel delivery and baking products industry applications, as well as freight bodies for general commercial use, stated that production data, if disclosed, would likely be used by competitors in their marketing and promotional efforts to obtain a competitive advantage against the EWR data submitter. Blue Bird, a large manufacturer of buses, school buses and motor homes, described production data for its industry, which are not publicly available, as highly proprietary and sensitive information that would benefit competitors who could use the information to chart the strengths and weaknesses of Blue Bird's business within specific make, model and model year classifications. The information would provide a tool for competitors in conducting market research and strategic planning.

Harley-Davidson, a motorcycle manufacturer, noted that detailed motorcycle production data such as submitted under the EWR rule are unavailable publicly and explained that the motorcycle business is essentially a bundle of niches, including touring, sport trails and a number of others. Companies base their product mix decisions on various factors. Future company plans are often based on an evolution of product direction and experience, including past production. The information reveals a company's internal future planning, providing competitors with information on a company's future production efforts. The Motorcycle Industry Council similarly observed that motorcycle production and sales data by model have not been publicly available.

Utility, a trailer manufacturer, noted that EWR data are organized by make, model and model year. This information reflects a company's production capacity, sales performance and, in turn, the relative success of a company's marketing strategy. Utility asserted that competitors could use this sensitive information to monitor a manufacturer's current production capacity and over time to ascertain the amount of resources that a manufacturer has expended in adding to that production capacity. Similarly, it stated that a supplier examining the production data of one of its customers, the vehicle manufacturer, can confirm its status as a sole supplier, which can enhance its position during supply contract negotiations. National Marine, a trade group representing boat trailer manufacturers, and its affiliate the Trailer Manufacturers Association, added that because boat trailer manufacturers typically produce a smaller number of units, the disclosure of quarterly production data would permit competitors to ascertain information about the number of units sold, potential costs, and production concerns of the manufacturers. Such information, it noted, can be used competitively against a trailer manufacturer.

The Juvenile Products Manufacturers Association (JPMA), representing manufacturers of child restraint systems, which are commonly known as child car seats, explained that the release of EWR quarterly production data would provide competitors and new entrants to the market with invaluable "real-time" ongoing competitive information about the reporting manufacturer's production capacity, sales and market performance. Such information, which would otherwise either be unobtainable or obtainable only through expensive market research, would give competitors invaluable insights into the operational and market strengths and weaknesses of submitters, enabling competitors to target their production and marketing efforts to areas where they detect vulnerabilities in a submitter's market position.

Cooper Tire submitted a study, further confirmed through comments from the Rubber Manufacturers Association (RMA), regarding the competitive harm that disclosure of otherwise confidential tire production numbers would have in the tire industry. The RMA, a trade association that includes tire manufacturers, stated that tire manufacturers can change the course of tire production in a relatively short period of time. If production numbers were released, manufacturers could change the production of types, sizes and lines of tires after reviewing a competitor's data. The data could indicate whether a competitor, for example, could produce sufficient quantities to supply a market or could be planning a promotion. EWR production data are valuable since they allow competitors to change production depending on the production output of a competitor. In addition, if released, production volume by stock keeping unit (SKU) could reveal marketing plans and vulnerabilities, facilitating targeting by competitors.[29] Similarly, disclosing production volume by tire line (and by SKU) could reveal private label (brand) customers' purchases.

In comments, RMA expanded on the Cooper study, noting that because tire manufacturers can alter their production within a relatively short period of time, this ability to change production dependent on the production output of competitors could significantly affect competition. RMA asserted that the quarterly tire production data reveal snapshots of the different segments within which a given company operates and its concentration of resources within those segments.

In contrast to the statements by the vehicle, child restraint and tire industries on the substantial competitive harm that would result from the disclosure of EWR production data, Public Citizen asserted that a class determination covering production is irrational. It expressed its view that there is no evidence that competitive harm has occurred for light vehicle manufacturers whose production numbers have been released and stated that NHTSA did not show why disclosure of EWR production data will harm only vehicle manufacturers other than light vehicle manufacturers.[30] Public Citizen did not present specifics to justify its view favoring the disclosure of the EWR production numbers. While Public Citizen's comments on the October 2006 NPRM were filed almost a month after the close of the comment period and well after other commenters submitted their comments, significantly, Public Citizen did not rebut the industry commenters' statements on the competitive harm that would flow from the release of EWR production data. Other non-industry entities also objected to the proposed class determination of confidentiality of EWR production numbers, but none provided facts to refute the claims or

[29] *See* 49 CFR 579.26(a). The regulations define a stock keeping unit as "the alpha-numeric designation assigned by a manufacturer to uniquely identify a tire product. This term is sometimes referred to as a product code, a product ID, or a part number." 49 CFR 579.4(c).

[30] Public Citizen's Litigation Group had criticized the agency's class determination for production numbers. It stated that there is no history of prior administrative decisions concluding that these data are confidential under Exemption 4 and no comprehensive examination of the competitive value of the information to each affected industry sector. In the footnote that follows, we address competing views of historical decisions which generally involve a single product that is the subject of an investigation. This notice addresses comments regarding various sectors, which Public Citizen did not rebut.

explanations by industry commenters on the competitive effects of disclosure.

The literature further indicates that production numbers, by their very nature, are competitively valuable and useful in helping manufacturers improve their efficiency and in learning what their competitors are producing. *See* Sidney Hill, Jr., *Real Time's Role in Product Quality*, Manuf'g Bus. Tech., May 1, 2005, at 22 (commenting on the value of mining real-time production data to manufacturers). Knowledge of what a competitor manufactures and sells are basic pieces of information sought by companies. *See* Laurence A. Carr, *Front-Line CI*, Competitive Intelligence Magazine, March 2001, at 11 (indicating that company staff should have detailed information on competitor products, marketing strategies, tactics, and programs). Companies operating in the automotive sector are no different in this regard. *See* Agostino von Hassell & Mark Bella, *Making the Most of Automotive Data*, Modern Plastics, June 1, 2004, at 16 (noting the importance of production and sales numbers in helping to predict the likely volume of new orders).

After carefully considering the comments and other information of record, NHTSA has determined that the release of EWR production numbers on medium-heavy vehicles and buses, motorcycles, trailers, child restraint systems and tires would be likely to result in competitive harm to the manufacturer submitting the data.

The EWR production data, in pertinent part, are a comprehensive compendium of information by make, model and model year, for medium-heavy vehicles and buses, motorcycles, trailers, child restraint systems and tires. They are real time data that are updated quarterly. They are not publicly available. As noted by numerous commenters, the production data are proprietary. The industry expends efforts to maintain the confidentiality of their production figures. This was not disputed by non-industry commenters.[31]

As substantiated by the comments, production numbers reveal otherwise unobtainable data relating to business practices and marketing strategies. The EWR production data can be used by competitors to monitor the evolving and current production, on a model-by-model basis, of the company that submitted the data. The data also reveal a manufacturer's capacity to produce certain products. Using this information (if released), competitors could adjust their own production volumes to better compete against the manufacturer that submitted the EWR data and make other production or marketing-related decisions to the substantial detriment of the submitter.

In a very real sense, production numbers reveal significant parts of a company's business plan to competitors. Production numbers reveal how the submitting manufacturer concentrates its production efforts. For example, RMA explained that the disclosure of tire production data would enable manufacturers to analyze their competitors' businesses. Cooper Tire added that production numbers reveal substantial information related to marketing plans and strategies. Cooper Tire further explained that because of the intense level of competition within the tire industry and the size differences among competitors, the disclosure of production data would make the risk of substantial competitive harm high, particularly for smaller manufacturers that produce for the replacement market.

In addition, because production is closely related to sales in the ordinary course of business, EWR production data can be used to assess a competitor's sales and market performance,[32] through means otherwise unavailable without considerable market research expense. Sales data are generally regarded as having high competitive importance. This market-related information would be valuable to the reporting manufacturer's competitors, who commonly want to know how well their competitors' products have been and are selling. The competitors would use the production information in their own product planning and marketing. Knowledge of what competitors are selling can change marketing tactics, result in the redevelopment of strategic plans, and lead to key recruitments. Also, since product plans are based upon an evolution of production direction and experience, disclosure of production information would expose important aspects of manufacturers' future product plans to competitors.

Similarly, EWR production data reveal a variety of valuable information related to the success of a competitor's marketing strategies. Through common monitoring activities, a company may know that a competitor has launched a new product or marketing campaign. But the critical information on the success of the campaign is not public. EWR data could be used to monitor the success of the campaign, without the cost of market research. The competitor could also avoid or minimize business risks by using the EWR production data to decide whether to launch a parallel effort. Using EWR production data, operating strengths and weaknesses of individual submitters would be discovered without resorting to costly market research and competitors would chart this information and use it to target a submitter's vulnerabilities.

Suppliers to an EWR submitter can, in some instances, use the production information to gain a competitive advantage over that submitter. Suppliers compete with vehicle manufacturers in negotiations over prices. Suppliers can use production information during pricing negotiations with EWR submitters to confirm their positions as sole suppliers, which can help them secure higher prices for their equipment.

Although non-industry commenters opposed the proposed class determination for EWR production data and suggested that production data are publicly available, they did not provide facts demonstrating that these data are available to the same extent as required by the EWR regulation.

The non-industry commenters also did not provide facts contradicting the competitive value of production data to competitors or the competitive effects on the submitters that would be likely to accompany their disclosure. Their argument on the light vehicle sector is largely a *non sequitur*. Production data for light vehicles have been released for a long time. But that does not demonstrate that if they had not been

[31] One matter raised in the comments is the availability of production data in individual investigations by NHTSA's Office of Defects Investigations, which investigates potential defects in vehicles and equipment. The agency noted in the NPRM, for example, that production data on child restraints and tires are not available. At the opening of an investigation, NHTSA often withholds production data or it groups it, as for example grouping a number of sizes of tires so that production of individual sizes is not stated. At later times in the process, NHTSA has disclosed the number of tires in recalls. E.g., Recall (NHTSA) number 07T–005 involving certain tires made by Cooper Tire. RMA and Public Citizen have made different assertions regarding the agency's historical practices. These issues need not be resolved here. More importantly, in terms of depth and scope, there are significant differences between the body of EWR data and data on the production of vehicles in individual investigations. While some production data on limited segments may be available for some reporting sectors, these data do not approach the level of detail or coverage contained in EWR submissions that is likely to cause substantial competitive harm to submitters. EWR production data are submitted quarterly and cover all models and model lines. In contrast, data involving vehicles and equipment in investigations typically involve a particular vehicle or equipment model or platform across one or several model or production years. The release of the production data on a single item is not comparable in terms of the scope of information released or the competitive effects of the release if the full compendium of EWR production data were released.

[32] See, *e.g. http://www.claritas.com/claritas/Default.jsp?ci=2&pn=cs&_bmwusa.*

released, there would not be any competitive harm from a change in policy of release. For example, Honda and Toyota went to considerable effort to design and produce their initial hybrid vehicles, the Insight and the Prius. Each of these vehicles is different. If a competing manufacturer were considering entering the regenerative hybrid market, information on which models sold well and which did not would be of considerable value. Honda and Toyota would have undertaken the market risk, but the competitor would benefit from the production numbers with highly reduced market research costs. Also, the mere statement that it has been released in the light vehicle sector is not a sufficient rebuttal to the specific comments from members of other industry sectors regulated under the EWR rule.

For the foregoing reasons, in light of the competitive value of the EWR production data on medium-heavy vehicles and buses, motorcycles, trailers, child restraints and tires, the manner in which these data would be used by competitors and the competitive effects that would be likely to follow if the data were disclosed on a wholesale basis to competitors, their disclosure is likely to cause substantial harm to the competitive positions of the manufacturers that submit the data.[33] This harm would flow from the affirmative use of the proprietary data by competitors.

2. Consumer Complaints

The EWR rule requires larger volume manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers to submit the number of consumer complaints that they have received broken out, for each make and model, by specific component categories (e.g., steering, brakes), fires and for certain categories (rollovers), all of which are binned by code. See 49 CFR 579.21(c), 579.22(c), 579.23(c), 579.24(c). Manufacturers of child restraints submit combined numbers of consumer complaints and warranty claims. See 49 CFR 579.25(c). Consumer complaints are defined in the EWR regulation as:

> [A] communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer Web site that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.[34]

Manufacturers are required to submit EWR data on consumer complaints regardless of whether they allege or appear to involve safety-related defects. 67 FR at 45849 (July 10, 2002). When NHTSA published the EWR rule, the agency expressly contemplated that the manufacturers would report a large volume of data and that the agency would then screen through this mass of information, looking for potential defect trends. *See* 67 FR 45822, 45865 (July 10, 2002); *see also* 71 FR 63738, 63741 (Oct. 31, 2006); 72 FR 29435, 29437–38 (May 29, 2007). This has proven true. NHTSA's experience with EWR data has shown that the vast bulk of EWR consumer complaint data has not been indicative of defect trends. Some consumer complaint EWR data have been helpful in identifying a potential defect trend.

In the NPRM, the agency proposed to make a class determination that EWR consumer complaint numbers would not be released to the public. 71 FR at 63742. The agency based this proposed class determination on information on both the competitive harm and impairment prongs of *National Parks*. We first address the likely competitive harm from the release of consumer complaint data, then we discuss the impairment to the agency's ability to obtain as complete consumer complaint information as possible if the information was released.

Competitive Harm

Numerous parties have provided information to NHTSA on the question whether the disclosure of EWR complaint data would be likely to cause the submitting manufacturer to suffer competitive harm. This includes commenters from the automotive industry and non-industry commenters.

Commenters from across different sectors of the automotive industry addressed the competitive value and use of consumer complaint data. At the outset of its comments, the Alliance stressed that there is actual competition in the auto industry. Manufacturers compete vigorously for new vehicle sales. Two of the elements over which manufacturers compete and expend substantial amounts of research money are consumer satisfaction and quality in the market for new vehicle sales. The Alliance supported its statement by information from Maritz Marketing Research, which identified factors considered by consumers in purchasing new vehicles, including overall quality and reliability (dependability).

The Alliance further showed that EWR information, including consumer complaints, is proprietary and comprehensive in nature. Its competitive value is enhanced by its comprehensive nature (for light vehicles they involve 18 vehicle systems and components as well as fires and rollovers, 49 CFR 579.21(b)(2), (c)) and continuing content which permits a model-to-model comparison on the numerous systems and components in EWR reports. The release of EWR consumer complaint data would permit wholesale industry-wide comparisons of the quality or durability of all significant systems or components on models chosen for comparison.

As explained by the Alliance, EWR consumer complaint data provide an extremely valuable window into the customer satisfaction of vehicle owners and the perceived quality of vehicle models on a make/model/model-year and system basis. Additionally, the EWR data provide valuable insights into a given manufacturer's business practices and decisionmaking, including, the methods used to collect consumer complaints.

The Alliance maintained that the comprehensive nature of these submissions—covering all makes and models over a multi-year timeframe—makes them a valuable compendium of consumer satisfaction and quality information that could not be replicated easily at any price and could be used by competitors. Citing *Worthington Compressors, Inc.* v. *Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981), the Alliance pointed out that the release of information collected at considerable cost by an entity that submitted information to the Government could easily have competitive consequences. In the immediate context, the submitters have expended considerable sums to gather large volumes of EWR data and the release of it would be contrary to the competitive interests of these entities and to the benefit of their competitors.

AIAM's comments focused on the totality and comprehensive nature of the EWR data, including consumer complaint data, which give the data

[33] The regulatory language adopted in Appendix C to Part 579 at the end of this notice varies slightly from the language in the NPRM. The language in Appendix C includes clarifications and the words "is likely to cause". The latter is consistent with the terms of NHTSA's assessments of the consequences of the release of the EWR information addressed in Appendix C and the standard of *National Parks*.

[34] 49 CFR 579.4(c).

value that is enhanced by the EWR rule's standardized reporting format. AIAM stated that a knowledgeable competitor can view this mosaic of information and reach valuable conclusions. The comprehensive body of information facilitates manufacturer-to-manufacturer comparisons. It would enable one company to use the experience of another to select an optimal design, production process and pricing strategy, while avoiding the cost and risk that would otherwise be encountered. The data would provide useful information about cost and quality. AIAM provided examples.

AIAM also explained that EWR complaint data would provide competitors useful information about the quality levels achieved by the submitting manufacturer or its suppliers, both for technologies used in vehicles and in their accompanying production processes, which permit competitors to evaluate a particular technology, process or supplier, at a risk and cost that is lower than otherwise attainable, as the competitor would not have to develop that information. Using this information, AIAM noted, competitors might be able to base decisions to pursue certain technologies to a substantial degree on their reviewing a submitter's EWR complaint information. Without this information, the competitor may have reached a different conclusion. The submitter may have expended substantial resources to help it decide whether to pursue a particular technology, while the competitor would gain a real world evaluation free of cost or the effort of a real world evaluation. This would impair the competitive position of the submitter.

AIAM added that the EWR information would also provide a competitor with information about the submitters' cost structure. Competitors could evaluate the information and make decisions whether to pursue various products or marketing strategies based on an assessment pertaining to the submitter's costs. A submitter's relative costs can also be evaluated using these data.

Nissan's comments noted that it uses inputs from customer call centers to gauge market responses to new features, to identify areas requiring consumer education and to help identify issues that could potentially require field or production adjustments. Customer inputs including consumer complaints help identify areas where field experience is showing an issue warranting further investigation. Nissan emphasized that the information is pointer information that may suggest further inquiry and is not necessarily indicative of a safety-related defect. The information primarily serves independent business reasons. If EWR consumer complaint information were publicly available, competitors could track that information and learn whether there is a market reaction to any new technology, supplier or product changes or new marketing effort. It is valuable, as a market reaction can lead a competitor to focus on it. The information would be valuable to competitors who may be considering deploying similar or competing technology. They could rely on Nissan's information in making a critical decision such as when to enter the market, which technology or suppliers to use, or how to best market the technology. It may be indicative of consumer confusion over a new technology. The value of this information is in that it would enable competitors to use information created by significant input to advance their own commercial interests. Complaints, Nissan explained, also reveal company practices and the performance of materials and components that are successful and those that are not.

TMA stated that the EWR data that medium-heavy vehicle manufacturers report are comprehensive—they involve 22 vehicle systems as well as fires and rollovers. The compendium of consumer complaint data, laid out model-by-model and system-by-system has great competitive value and there are numerous ways in which competitors could use these data to their competitive advantage. TMA characterized the data as a data bank of quality control information that competitors can use to evaluate the performance, reliability and durability of various components and systems without the expense and risk associated with product development that would normally occur with field-testing and "trial and error" efforts, while shortening the amount of time competitors need to market competing products.

TMA endorsed a comment by GM as applying with equal force to the truck industry. GM had explained that if a supplier offers a newly-designed system to a vehicle manufacturer, a manufacturer can undertake a tear down evaluation and test it, but no practical test duplicates the experience gained from hundreds of thousands of miles on the road. A vehicle manufacturer that installs the system gains the field experience. If EWR data were made available, other manufacturers would have access to some of the same information and would be able to make their decisions with less testing and analysis. The disclosure of the data would force the first manufacturer to subsidize its competitors, reducing their costs at the first manufacturer's expense.

TMA presented a scenario to demonstrate how the information can be used:

> [i]t may be well known that Truck Manufacturer A uses Lighting Assembly X on one of its truck models. (The manufacturer of lighting equipment is typically identifiable on the lamp or lamp assembly.) If Manufacturer B is deciding whether to use the same assembly on one of its models, Manufacturer B could review the EWR warranty, consumer complaint and field report data to evaluate Manufacturer A's field experiences with its lighting equipment on that model. As a result, Manufacturer B will get all of the benefits of Manufacturer A's field experiences with that product—good or bad—while avoiding the costs, effort and risk that Manufacturer A has incurred. Moreover, Manufacturer B could *immediately* benefit from that experience data, while it took Manufacturer A years to be in the same position. (Emphasis in original.)

TMA stated that the disclosure of consumer complaint data would provide competitors with valuable and previously unavailable insight into the field experience and performance of a submitter's entire product line and individual systems and components. TMA stated that competitors could use this information to assess the in-use performance of parts and systems. It would be used in purchasing, pricing, and sourcing decisions, all of which would have competitive impacts. TMA added that the release of the information would adversely affect these manufacturers' customers, in terms of fleet performance and durability.

Utility observed that the EWR regulation requires trailer manufacturers to provide information relating to each make and model as well as for system components. Trailer manufacturers can use EWR complaint data to evaluate trailer performance, help identify technological and engineering improvements that might better satisfy customers and provide guidance to prioritize resources to implement these improvements. If these data were released. competitors would gain product and component performance data that they could implement into marketing strategies. Accordingly, Utility said it would be irreparably harmed.

Harley-Davidson stated that it aggressively seeks consumer contact, including opinions. Consumer input would be counted in EWR reports when it meets the EWR rule's broad definition of consumer complaint. Harley's continued success depends on satisfying

motorcycle enthusiasts. It asserted that disclosing this added feedback, which it obtained through considerable effort, would cause it harm. It added that the data are not likely to be related to a potential safety issue.

The Juvenile Products Manufacturers Association (JPMA) observed that different manufacturers maintain different information on consumer complaints. If the EWR information were disclosed, those with more limited submissions would obtain more information about their competitors' products than they would be disclosing, which would give them unequal access to competitively significant information. In addition, EWR information could be used by new entrants to the market to obtain valuable competitive information at virtually no cost that would otherwise be very expensive or impossible to obtain. JPMA added, for the compendium of EWR information on consumer complaints and warranty claims broken down by make and model of child car seat, this type of quality information on individual products is highly proprietary to individual manufacturers. These real time data provide ongoing competitive information about each submitter's market performance. According to JPMA, the data provide insights into a submitter's operational and market strengths and weaknesses by revealing the relative field performance through reports on consumer complaints and warranty claims of a manufacturer's product line. These data are either unobtainable or obtainable only through expensive market research.

Several manufacturers addressed another consequence of disclosure: misleading and unfair comparisons of the data. The Alliance stated that the disclosure of the comprehensive compendiums of EWR information would be misleading to consumers and unfair to the submitting manufacturers because consumers would attempt to make comparisons of the performance of one model to another, across multiple model years, on a quarterly basis, which, as the Alliance observed, can not be done. Similarly, AIAM stated that public disclosure of the data would create a great potential for misunderstanding and mischaracterization. Reports with simple comparisons could affect the competitive positions of manufacturers in a way that was unfair. Also, TMA stated, with supporting explanation, that manufacturers and consumers could misuse it to draw unfair and unsubstantiated and misleading comparisons regarding competitors' products. JPMA added that the release of the encyclopedia of quality information encompassed in EWR data would cause submitters unwarranted competitive harm because the reports will include reports that are not safety related. This, JPMA said, will result in unwarranted disparagement.

Several entities acknowledged the limited releases of information submitted by the manufacturers during investigations by NHTSA's Office of Defects Investigation (ODI). The Alliance stated that the release of limited consumer complaint information on specific models in a limited number of model years in investigations conducted by NHTSA does not support the release of the comprehensive compendium of information in EWR data submissions. A limited release is much different from a competitive standpoint than the automatic release of the continually collected full compendium of quality and customer satisfaction information that is represented by the quarterly EWR data submissions. Unlike EWR data, the release of data from investigations does not permit industry-wide comparisons of the quality or durability of all significant components across entire product lines and they are not a compendium of quality and customer satisfaction information developed over time. Thus, the Alliance concluded that the confidentiality of EWR information on consumer complaints should be maintained.

Similarly, JPMA explained that although its members do not object to the release of the numbers of complaints on a specific make or model of child restraint within the context of a specific defect investigation, the wholesale disclosure of consumer complaint numbers by make and model would reveal highly proprietary information competitors, providing them with a compendium of quality information developed by a submitter.[35]

On the other hand, non-industry commenters argued that EWR consumer complaint data should not be held confidential. Public Citizen agreed with NHTSA's statements in the NPRM that "the commercial value of complaint data is well recognized" and that "complaint data are a valuable data source used by companies to help them identify areas of concern including product performance, to consumers and provide guidance on where to allocate their limited resources." Public Citizen added that "[c]onsumer feedback is vital for companies striving to maintain a profitable business."

Public Citizen raised issues of public availability of information, including information other than EWR data and EWR data.[36] It indicated that, to some extent, information is available through industry guides that are available to manufacturers for a fee and suggested that NHTSA should explore that. It said that NHTSA must prove that other industry groups do not have access to this information. In its view, industry can afford expensive trade publications. However, the public which would benefit from the data, often has severely limited access to these avenues of information, if access even exists.

Public Citizen asserted that under the EWR rule, only total numbers of complaints are provided to the agency, which greatly hinders its usefulness. It viewed these data as extremely basic and requiring no unnecessary details about company operations or future company plans. AAJ raised a policy argument to support its view that the data should be disclosed. AAJ argued that in proposing this class determination, NHTSA did not adequately mention that complaint data are crucial for consumers to make an expensive purchase of an item that has the potential to cause bodily injury. It said consumers are entitled to all available data to render their decision to purchase a motor vehicle. It also asserted that complaints would be valuable to a jury to render a verdict. Therefore, in AAJ's view, NHTSA did not reasonably consider the public's interest in disclosure and the public has a compelling interest in the information, financially and for safety. Neither Public Citizen, which filed its comments long after the close of the rulemaking comment period and long after the industry representatives had submitted comments, nor AAJ provided information rebutting the industry commenters' explanations of how the complaint data can be used competitively to the significant detriment of the competitive positions of the submitters.[37]

[35] The Motor Equipment Manufacturers Association/Original Equipment Suppliers Association (MEMA/OESA) also opposed treating complaint data as not confidential and stressed that quantitative differences between defect investigation and EWR submissions made comparisons between the two inapposite.

[36] Public Citizen referred to the Automotive Industry Status Report, noting vaguely that it already makes some of the proposed exempt information available to manufacturers for a fee. But it did not say what information, or compare the breadth or detail of EWR reporting to that in the Automotive Industry Status Report. We have placed a copy of the Report in the docket. Based on our review, in the absence of any specifics from Public Citizen, we do not accept its conclusion.

[37] Public Citizen's comments also incorrectly assume that the collected EWR data only relate to potentially unsafe products.

In the literature, the commercial value of consumer complaint data is well recognized. *See e.g.*, Edward Bond & Ross Fink, *Meeting the Customer Satisfaction Challenge*, 43 Industrial Management, Issue 4 (July 1, 2001) (Noting the importance of measuring customer satisfaction, describing customer complaints as a data source to a company that can create a "big benefit" from small changes); John Goodman & Steve Newman, *Six Steps to Integrating Complaint Data into QA Decisions*, 36 Quality Progress, Issue 2 (Feb. 1, 2003) (Stressing the importance of complaint data in helping to identify issues with products and the data's effectiveness in assisting companies with resource allocation decisions to address quality assurance issues); Dep't of Commerce, *Managing Consumer Complaints* (1992) (Complaint data may signal how products and services meet or do not meet consumer expectations and how products can be better designed. They may signal a need for better quality control. Complaint management can save business unwanted costs); Michael Graver, *Listening to Customers* (Recognized as a key component to various business strategies, world-class companies now measure and manage customer value and satisfaction. These are often a key performance measure, a leading indicator of financial performance, an important diagnostic measure for continuous improvement and a tool to manage competitive advantage); Robert Woodruff, *Customer Value: The Next Source for Competitive Advantage* (1997) (Managers consider their customers when determining which improvements are needed. Competition for advantage in markets through superior customer value delivery); Jane Goodman-Delahunty, *Promoting Consumer Complaints in the Financial Sector* (2001) (Industry providers should affirmatively encourage consumer complaints. Consumer complaints can be a valuable resource regarding defects in products and services that can otherwise result in a loss of business and market share).[38]

After carefully considering the comments and other information of record, NHTSA has determined that the release of EWR consumer complaint data on light vehicles, medium–heavy vehicles and buses, motorcycles, trailers, and child restraint systems is likely to cause substantial harm to the competitive positions of the manufacturers that submit the data.

The EWR consumer complaint data amount to compendiums of comprehensive information on consumer complaints. The manufacturers' reports cover broad landscapes of makes and models of motor vehicles and child restraints, providing information on current models and those produced in the previous 10 years for motor vehicles and 4 years for child restraints. They address numerous components and systems of vehicles and equipment and, for certain vehicles, include rollovers and fires. *See, e.g.*, 49 CFR 579.21(b)(2); 49 CFR 579.22(b)(2). The comprehensive nature of the compendiums of EWR data on consumer complaints is enhanced by their continuing content, which is updated by quarterly reports, and by their standardized reporting format. They can be used for industry-wide comparisons on these numerous systems and components. The amount of consumer complaint data is substantial. For the first 15 quarters of EWR data, an average of 65 light vehicle manufacturers per quarter reported over 12 million consumer complaints; an average of 87 medium–heavy vehicle and bus manufacturers reported over 365,000 consumer complaints; an average of 18 motorcycle manufacturers per quarter reported nearly 51,000 consumer complaints; an average of 285 trailer manufacturers per quarter reported nearly 97,000 consumer complaints and an average of 20 child restraint manufacturers reported a combination of nearly 65,000 consumer complaints and warranty claims.

The manufacturers that submit the data expend considerable sums to collect the information. This includes staffing phone centers, reviewing mail and considering electronic communications.

The consumer complaints that are amassed and binned by individual manufacturers for EWR reporting are collected for each manufacturer's internal use. The data are not publicly available and are highly proprietary.[39] The data could not be replicated easily at any price.

Manufacturers compete and expend substantial amounts of research money on consumer satisfaction and quality in the market. There is competition to introduce new models and features that meet customer satisfaction. Companies seek to keep customers satisfied in order to maintain and grow their customer base. At the same time, companies seek to avoid expenses incurred in rectifying quality problems and the associated customer dissatisfaction that attends such problems. It is well recognized that consumer complaints are commercially valuable. This is recognized in the literature. They are particularly valuable in the highly competitive motor vehicle and equipment industries.

EWR consumer complaint data are a very valuable information compendium on customer satisfaction of vehicles and child restraints. This data base provides information on perceived problems with the company's product. As Harley-Davidson explained, the data are reflective of opinions from consumer contact. This is valuable to companies, which depend on satisfying customers. Disclosing this added feedback, which a submitter obtained through considerable effort, would provide useful information to competitors.

More broadly, the data also reveal market responses to various aspects of vehicles and equipment. They provide feedback on new features, areas requiring consumer education and issues that could potentially require field or production adjustments, regardless of safety. Customer inputs such as complaints help identify areas where field experience is showing an issue.

Companies track what competitors are introducing, including product modifications and new technologies. Suppliers, which commonly promote the introduction and use of their equipment, are known. What is not known is whether a product was well received. If the consumer complaint information were publicly available, competitors could and likely would use it to learn whether there is a market reaction to any new technology, supplier or product changes or new marketing effort. The information would be valuable to competitors who may be considering deploying similar or competing technology. Competitors could rely on EWR information in making critical decision such as when to enter the market, which technology or suppliers to use, or how to best market the technology. The value of this information is in that it would enable competitors to use information created by significant input to advance their own commercial interests.

In addition, the EWR consumer complaint information amounts to a data bank of quality control information of a manufacturer's products, model-by-model and system-by-system. It provides in-use information on technologies. Competitors can engage in "tear downs" of another company's products. They can run lab tests. But

[38] *See also Heller* v. *Shaw Industries*, 1997 WL 786542 (E.D. Pa) at *5 (consumer complaints held confidential).

[39] The disclosure of consumer complaint data in investigations is limited. It does not involve a compendium of information that is fairly comparable to the EWR data.

efforts such as these fall short of providing a good understanding of the quality of a product in operation in the field. EWR consumer complaint data provide information on the reliability and durability of various systems and components. Competitors would use this information to evaluate a particular technology or supplier, at a lower risk and cost than otherwise attainable, because the competitor would not have to develop that information. Using this information, competitors could base decisions whether (or not) to employ certain technologies or suppliers to a substantial degree on their reviewing a submitter's EWR complaint information. While the manufacturer submitting the data would have expended substantial resources in deciding whether to install a particular technology, the competitor would gain a real world evaluation without the time, expense and risk associated with product development that would normally occur with field-testing and associated pre-production modifications. Beyond selection of a technology, there are often questions on the preferable design approach. The EWR complaint data would enable one company to use the experience of others to select an optimal design. If released, a competitor could view this information, a model-to-model comparison on the numerous systems and components in EWR reports, and reach valuable conclusions. The release of the data would permit wholesale industry-wide comparisons of the quality or durability of significant components on models chosen for comparison.

In a similar vein, EWR consumer complaints are useful in evaluating field experience and product performance. Complaints (or the absence thereof) reveal the performance of materials and components that are successful and those that are not. The disclosure of consumer complaint data would provide competitors with valuable and previously unavailable insight into the field experience and performance of a submitter's entire product line and individual systems and components. Competitors could use this information to assess the in-use performance of parts and systems. EWR consumer complaint data help identify where technological and engineering improvements that might better satisfy customers and provide guidance to prioritize resources to implement these improvements. It could also be used to select a production process or make purchasing, pricing, and sourcing decisions, while avoiding the cost and risk that would otherwise be encountered. This would have competitive impacts.

The EWR consumer complaint information would also provide a competitor with information about the submitter's cost structure. In some contexts, the data would reveal rates of problems. These rates are an important factor in the costs of various technologies. Competitors could evaluate the information and make decisions whether to pursue various products or marketing strategies based on an assessment of the submitter's costs.

Additionally, the EWR data provide competitors with valuable insights into a given manufacturer's business practices and decisionmaking, including the methods used to collect consumer complaints.

Public Citizen agreed that consumer complaint information has value. But it disagreed in a general and conclusory manner with the proposal's view that EWR consumer complaint data is competitively valuable. Public Citizen filed its comments in 2007 long after both the close of the comment period on the NPRM and after the industry commenters had submitted comments. Its opinions that the reporting of only numbers of complaints greatly hinders the data's usefulness and that these data are extremely basic and require no unnecessary details about company operations or future company plans were contrary to the weight of the comments. Public Citizen did not provide facts to rebut the statements of the industry commenters.[40] Moreover, the industry has experience in considering consumer complaints and explained the value of these EWR data.

As the court recognized in *Worthington Compressors, Inc.* v. *Costle*, 662 F.2d 45, 51–52 (D.C. Cir. 1981):

> If * * * competitors can acquire the information only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter. * * * Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government. * * * [T]he essential test is the same: whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it.

The release of EWR consumer complaint information collected at considerable cost by manufacturers would have competitive consequences, as recognized in *Worthington Compressors*. The submitters expend considerable sums to gather large volumes of EWR data. Their information is valuable and could be used by competitors. The release of it would be to the significant benefit of the competitors of the submitters and to the detriment of the competitive position of the manufacturers that submitted the information.[41]

Public Citizen suggested that the data should be released because they involve safety concerns.[42] This is not a valid characterization of the data. By definition, consumer complaint data go well beyond safety data. 49 CFR 579.4. Also, our experience over 4 years has been that the vast bulk of consumer complaint data are not indicative of defect trends.

Public Citizen had also raised issues about the availability of the EWR

[40] Some of Public Citizen's comments were based on a misunderstanding of the proposed rule. Public Citizen referred to fatalities, injuries and property damage claims, but those were outside the scope of the proposed rule.

[41] As an alternative basis for confidentiality, the disclosure of the comprehensive compendiums of EWR information would likely result in result in consumer misuse. In *Worthington Compressors*, 662 F.2d at 53 n.43, the court permitted the consideration of consumer misuse of commercial information that is otherwise unavailable. (On remand, if the court finds the tests cannot be accurately duplicated, it should consider whether competitors or consumers may misuse the information to the detriment of appellants' competitive positions). The disclosure of the EWR information would be misleading to consumers and unfair to the submitting manufacturers. Consumers would attempt to make comparisons of the performance of one model to another across multiple model years, on a quarterly basis, which can not be done. The underlying foundations for the data are not the same. Different manufacturers have different systems for collecting consumer complaints. Some have wider nets than others. The net result would be unfair, unsubstantiated, and misleading comparisons. These comparisons would adversely affect the competitive positions of manufacturers in a way that was unfair.

Public Citizen has asserted that this analysis amounts to an unwarranted product disparagement theory, and contends that the harm occurring from the disclosure of these data amounts to adverse public reaction, which is not a cognizable harm under Exemption 4. The agency disagrees with this attempt to recharacterize the harm. Since the EWR data are competitively sensitive for a valid reason under Exemption 4, other potential consequences such as adverse public reaction, do not dictate that we treat the information as non-confidential. *Occidental Petroleum Corp.* v. *SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989).

[42] Public Citizen referred to dangerous products that injure and kill people. It also stated that the release of the data will encourage the production of better products which ultimately will benefit industry. Public Citizen did not support this statement, and it is outside the considerations under Exemption 4.

complaint data. These data are not publicly available, as repeatedly stated by industry commenters, and Public Citizen has not shown otherwise. The limited disclosures of limited consumer complaint data by the agency in ODI defect investigations of particular problems in specific products do not resemble the breadth or scope of the information that is submitted pursuant to the EWR rule. The agency's valid reasons for choosing to disclose certain data during investigations (e.g., to elicit additional consumer attention concerning a possible, specific defect, or to inform consumers of the specific scope of an investigation or recall) are not applicable in the EWR context. Similarly, the data collected by third-parties such as Consumer Reports and other publications is not comparable in depth, breadth or scope, and Public Citizen did not show otherwise.

As the Alliance and others explained, NHTSA's current practice of generally disclosing limited, model- and model-year-specific consumer complaint numbers when such information relates to specific defect investigations does not justify the wholesale release of the EWR data. To the extent such limited disclosures are competitively useful, it is primarily to identify whether another manufacturer may have a similar issue (*e.g.*, uses the same part and has a similar failure experience). These limited disclosures do not offer the same market-oriented base of information as the comprehensive collection of trend data provided pursuant to the EWR rule. Non-industry commenters did not dispute these points. As a result, a comparison between publicly available complaint data and the compendium of EWR complaint data submitted by manufacturers is not valid.

Impairment

In addition to proposing to hold EWR consumer complaint data confidential on grounds of competitive harm from their release, the NPRM proposed to hold these data confidential under the impairment prong of FOIA Exemption 4. 71 FR 63743. As reflected in that notice, manufacturers may obtain and receive customer input and feedback on product performance in a variety of ways, and establish differing practices for the receipt of customer complaints. The nature and level of effort expended by a company is discretionary. It is beneficial to NHTSA if a company expends considerable effort. More consumer input channels increase the robustness of the available data, which is submitted under the EWR program. Consumer complaints provide feedback on product performance that can be valuable to NHTSA in identifying problems, including potential defects that may point to the presence (or absence) of a safety problem. The agency seeks to ensure that it receives as much information as possible to identify possible defect trends.

Under the early warning reporting provisions of the Safety Act, however, NHTSA may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer. 49 U.S.C. 30166(m)(4)(B). In other words, NHTSA may require manufacturers to submit reports based on information that they have collected but may not require manufacturers to collect and submit information not otherwise collected. In view of the fact that the quantity and comprehensiveness of the EWR consumer complaint data depend in part on the willingness of manufacturers to collect this information through a broad and multi-input approach, NHTSA does not want to take steps that discourage the collection efforts.

Both industry and non-industry commenters addressed the agency's proposal. Industry commenters stated that a class determination for consumer complaints was justified on the basis that disclosure would impair the agency's ability to obtain this information in the future.

The Alliance stated that there are variations in how manufacturers conduct their consumer complaint programs. Manufacturers can alter the manner in which these programs are conducted based on a variety of internal considerations, benefits, and costs. The Alliance cited a purpose of the TREAD Act, which is to enhance the ability to carry out the Safety Act, a purpose of which is to reduce the number of accidents and the fatalities and injuries arising from them. The Alliance reiterated an earlier statement by NHTSA (which is of continuing validity) that the agency's ability promptly to identify safety related defects would not be enhanced if disclosure of EWR data diminishes the volume or reliability of the information. Nor would the public interest in vehicle safety be served if disclosure has the result of discouraging manufacturers from being responsive to consumer concerns that may relate to motor vehicle safety or imposing greater costs on consumers who need to address such concerns. Confidential treatment of those data is necessary to avoid creating a disincentive to the continued voluntary creation of the information, since there is no requirement to collect the information in the first instance. The Alliance concluded that NHTSA's ability to collect comprehensive EWR information and, thus, its ability to address defect trends indicated by EWR data, will be impaired if the data are released. The Alliance also noted that apart from the early warning context, a reduction in consumer complaint data would have a deleterious effect on NHTSA's ability to conduct the defect investigations that it has opened.

Utility emphasized that the quality and quantity of information relating to consumer feedback that NHTSA receives depends largely on a manufacturer's willingness to expend financial and administrative efforts to collect such information. It advised that manufacturers who currently collect and organize this information would be less inclined to do so if the information were disclosed and ended up generating frivolous lawsuits, the defense of which further raises the cost of doing business.

AIAM stated that the public disclosure of the complaint information would impair NHTSA's interests in promoting safety. If less complete information relating to safety issues is provided to the agency faulty decisions could follow.

In contrast, Public Citizen asserted that NHTSA has not shown that making the data public would hinder its ability to collect this information in the future. In Public Citizen's view, in light of the extreme value of consumer complaints to manufacturers, they are unlikely to stop collecting this information and unlikely to alter their practices in collecting complaints. It added that companies could not cease receiving complaints. Public Citizen also asserted that past events, such as the Ford/Firestone problems, illustrate the interest of the public in EWR data. Public Citizen further stated, without citation, that Congress intended for the public to use the data to monitor whether NHTSA is fulfilling its obligation to investigate significant safety issues. Finally, Public Citizen contended that the standard for withholding information under the impairment prong has not been met.

Public Citizen has maintained that the impairment prong of FOIA Exemption 4 requires a rough balancing of the importance of the information and the extent of the impairment against the public interest in disclosure, citing *Washington Post* v. *HHS*, 690 F.2d 252, 269 (D.C. Cir. 1982); *Washington Post* v. *HHS*, 865 F.2d 320, 326–27 (D.C. Cir. 1989). However, in *Public Citizen Health Research Group* v. *FDA*, 185 F.3d 898, 904–05 (D.C. Cir. 1999), the

Court rejected "a consequentialist approach to the public interest in disclosure" as "inconsistent with the "[balan[ce of] private and public interests' th[at] Congress struck in Exemption 4." The Court went on to state that "[t]hat balance is accurately reflected in the test of confidentiality" established by *National Parks* and that a requester cannot "bolster the case for disclosure by claiming an additional public benefit" in release. *Id.* at 904. In other words, "the public interest side of the balance is not a function of" among others "any collateral benefits of disclosure." *Id.* Accordingly, an Exemption 4 case may not be bolstered by claiming an additional public benefit from disclosure of data is beyond the test of *National Parks*.[43] In the following discussion, we will address the impairment that would result from disclosure. While we do not accept the balancing test under Exemption 4 advanced by *Public Citizen*, in the alternative, we will address a rough balance between the importance of the information and the extent of the impairment against the public interest in disclosure.

NHTSA's Office of Defects Investigations (ODI) has long viewed consumer complaints as a critical aspect of the data the agency considers to identify potential vehicle and equipment problems. 67 FR at 45847 (July 10, 2002). For this reason, NHTSA included consumer complaints in EWR reports. 67 FR at 45847–51. Consumer complaint information is a useful pointer to areas that, after appropriate assessment, may lead to defect investigations and ultimately to the remedy of safety defects. The importance of consumer complaints increases as warranties expire and the availability of warranty claims information correspondingly diminishes. The EWR regulation assures that the agency receives information about the amount of complaints received by manufacturers as to each of the specified components or systems.

Our experience in defect investigations has been that companies generally receive considerably more consumer inputs than does the agency on any actual or potential vehicle problem. 67 FR at 45848. Because manufacturers ordinarily receive more complaints than consumers send to the agency, the agency must rely on manufacturer efforts to continue to amass as much information as possible. Companies may receive customer input and feedback on product performance in a variety of ways and establish differing practices for the receipt of complaints. The EWR definition takes this possibility into account. Companies may increase available staff at their toll-free telephone numbers or create web-based systems to accept complaints via electronic mail. Additional input sources increase the robustness of available data, which can be valuable both to the company collecting it and to NHTSA in identifying problems—including problems that may point to the presence (or absence) of a safety-related defect.

The disclosure of consumer complaint information would be likely to discourage manufacturers' proactive efforts to obtain these data or to expend sums to receive more information or to use it more effectively. The release of the EWR information would not eliminate manufacturers' collection of consumer complaints, but they likely would take steps to reduce the collection of complaint data in order to improve their numbers. As a direct result, NHTSA would collect considerably less data in the future. The agency would be faced with attempting to conduct analyses with less robust reporting from manufacturers. NHTSA's ability to identify potential safety defect trends would be impaired. Such a result would affect the agency's ability to carry out the early warning program.[44] In sum, the disclosure of the information would be likely to impair NHTSA's ability to obtain necessary information in the future.

On the other hand, the public would not receive significant, if any, safety benefits from the release of EWR consumer complaint information. The EWR data cover a wide range of consumer satisfaction issues. As explained in the preamble to the EWR rule, we sought to obtain complaint information beyond that which would be likely to involve safety issues:

> The agency is unwilling to adopt the recommendation that the complaint must allege a safety-related defect, as this would unduly limit the reporting of consumer complaint information that NHTSA is seeking to collect through the early warning reporting rule. As stated in the NPRM, based on its past experience with defect investigations, the agency does not "believe that [it] would be appropriate to simply require reporting of 'safety-related' problems, since manufacturers often have a much more narrow view of what constitutes a safety-related problem tha[n] we do." [66 FR] at 66202. If the term "consumer complaint" were limited to complaints specifically alleging a safety-related defect, communications expressing dissatisfaction with a product or relating that the product did not perform in a satisfactory manner would not necessarily be reported to the agency. 67 FR at 45849.

The agency included this category of information in the early warning program to ensure the collection of a comprehensive amount of data for it to use in its analysis. This has proven true. The vast majority of this information has not been indicative of defect trends.

NHTSA also has balanced the importance of consumer complaints and the extent of the impairment to the government against the public interest in disclosure. The importance of complaints is well-established. The magnitude of the numbers of complaints is important to us, as in our screening we will look for trends based in part on relatively high rates. We believe that, given manufacturers' substantial control over information collection, if the numbers of consumer complaints were disclosed to the public, it is likely that the numbers of consumer complaints would be reduced considerably and, as a consequence, our ability to detect potential safety problems would be substantially diminished.

On the other hand, the public interest in disclosure of consumer complaints is limited. If the data were released, the public would have a generalized awareness of consumer dissatisfaction or a perception of a potential or actual problem broken out by the elements provided in 49 CFR Part 579. But based on EWR complaint data alone, it is not possible to identify a safety defect in a particular product. And, unlike ODI investigations, a specific potential defect is not identified in EWR data. Thus, to the extent balancing is required, the impairment prong

[43] Public Citizen asserted that a guiding tenet of both FOIA and the TREAD Act's early warning system is to ensure that the public has the ability to monitor government institutions and protect themselves by being informed of potential defects. This is unsupported. This is not the guiding tenet of FOIA Exemption 4 and this was not the purpose of the early warning rule. The purposes were to enhance the Secretary's ability to carry out the Safety Act and assist in the identification of defects related to motor vehicle safety. 49 U.S.C. 30166(m)(1), (3)(A).

[44] Limited disclosure of consumer complaint data collected by manufacturers during ODI investigations is different from the disclosure of EWR data sought by Public Citizen and others. The consumer complaint data released in the course of agency investigations is limited. It involves limited models and model years and specific alleged problems. EWR data amount to full compendiums, across makes, models and model years involving numerous systems. The release of consumer complaint data in investigations does not negate the competitive value of the EWR data or the likely impact that wholesale (rather than piecemeal) disclosure would have on submitters. We also note that there are benefits of releasing information in investigations, such as providing for public input which could enhance the agency's understanding of an issue. Also, data collections on consumer assessments by third parties are not comparable to the volume and depth of information received under the EWR rule.

balancing weighs in favor of nondisclosure of consumer complaint data.

3. Warranty Claims

The EWR rule requires larger volume manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers to submit the number of warranty claims, without regard to whether they are safety-related, that they have paid, broken out, for each make and model, by numerous specific categories of vehicle systems (*e.g.*, steering, brakes), fires and for certain categories rollovers—all of which are binned by code. *See* 49 CFR 579.21(c), 579.22(c), 579.23(c), 579.24(c). In addition, the rule requires manufacturers of tires to report warranty adjustments they paid, other than for relatively low volume tire lines, on a number of categories of tire failures, such as the tread and sidewall. 49 CFR 579.26(c). In the child restraint category, warranty claims are combined with consumer complaints. 49 CFR 579.25(c). Repairs made outside of warranties that are covered by "good will" are also reported under warranty claims and warranty adjustments.[45] 49 CFR 579.4.

The EWR warranty data reflect the costs that manufacturers have incurred in satisfying claims for payments arising from problems with their products. Ordinarily, those costs are the costs of repairs of vehicles or the repair or replacement of equipment. The early warning data on warranty claims involve a wide range of issues. For the most part they do not reflect defect trends.

In the NPRM, the agency proposed to make a class determination that warranty claims (warranty adjustments in the tire industry) in EWR data would not be released to the public. 71 FR at 63743. The agency based this proposed class determination on both the competitive harm and impairment prongs of *National Parks*. We first address the competitive harm from the release of EWR warranty claims data, then we discuss the impairment to the agency's ability to obtain as complete warranty information that would follow the release of the information.

Competitive Harm

Numerous commenters have provided information to the agency on whether the disclosure of EWR warranty claims and warranty adjustment data (collectively warranty claims) would be likely to cause the submitting manufacturer to suffer competitive harm. This includes both industry and non-industry groups.

Commenters from various sectors of the automotive industry explained the competitive value and use of EWR warranty claims data as well as the competitive harm that the release of the data likely would cause. As noted in the discussion of consumer complaints above, at the outset of its comments, the Alliance showed manufacturers compete vigorously for sales of new vehicles. Similarly, there is substantial competition for tire sales. The manufacturers expend substantial amounts of research money annually related to quality and consumer satisfaction in the market for new sales.

The EWR warranty data are a comprehensive compendium of warranty claims. They cover numerous systems and components (e.g., 18 for light vehicles and 22 for medium heavy vehicles), as well as fires and rollovers for many reporting industry sectors. They cover makes and models going back many years and are updated quarterly. As noted by the Alliance, their value is enhanced by their continuing content, which permits a model-to-model comparison on the numerous systems and components in EWR reports. The data are proprietary and are not publicly available.

Manufacturers have submitted a significant volume of warranty claims data to NHTSA under the EWR program. According to comments, the manufacturers have expended tens of millions of dollars in reporting under the program. The release of EWR warranty data would permit wholesale industry-wide comparisons of the quality or durability of all significant systems or components on models chosen for comparison. Disclosure of this information, as the Alliance explained, would financially benefit others who obtain and use the data for purposes that would be contrary to the competitive interests of the submitting manufacturers.

The Alliance's discussion of EWR warranty data addressed the competitive aspects of those data including the competitive consequences of the release of warranty information in a context that also addressed consumer complaints and field reports. The Alliance explained that the EWR data provide valuable information on quality and consumer satisfaction of vehicle owners on a make/model/model-year basis.[46] The Alliance emphasized that warranty claims information is particularly sensitive from a competitive standpoint. Additionally, the Alliance noted that EWR data provide valuable insights into a given manufacturer's business practices and decisionmaking, including the application of warranty terms and conditions, the coverage of products and systems by a given warranty, and the manufacturer's willingness to provide good will adjustments after the end of an official warranty period.

The Alliance referred to a report from a consultant, AutoPacific, which made several observations regarding the value and use of warranty data. Under a competitive harm analysis heading, AutoPacific stated that it is well-known that automobile and component manufacturers closely guard their warranty data for competitive product design and pricing reasons. Comparative component warranty, reliability, and durability experiences strongly influence component pricing and sourcing decisions. If an original equipment manufacturer (OEM)[47] purchases a component and obtains field experience with that component, it can be expected to use that information to make decisions about purchases and the prices it will pay. Providing that field experience to other manufacturers gives them a free ride at the submitter's expense. Auto Pacific also observed that component manufacturers can use vehicle manufacturer warranty data in preparing bids for new business, planning new business marketing strategies, and estimating the likely costs and pricing positions of vehicle manufacturers, with whom they may compete for sales in the aftermarket. The warranty claim experience at the component level could be useful to them, to the detriment of the vehicle manufacturers.

The Alliance pointed out two aspects of warranty claims data that are

[45] These data include "good will" repairs that are conducted and paid for by the manufacturer outside of the warranty. "Good will" means "the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter." 49 CFR 579 4.

[46] The Alliance asserted that the comprehensive nature of these submissions—covering all makes and models over a multi-year timeframe—makes them a valuable compendium of quality and consumer satisfaction information that could not be replicated easily at any price and could be used by competitors to follow warranty trends that provide a window into submitters' warranty costs. The Alliance, citing *Worthington Compressors*, pointed out that the release of information collected at considerable cost by an entity that submitted information to the Government could easily have competitive consequences. The submitters expend considerable sums to gather large volumes of EWR data and the release of it would be contrary to the competitive interests of entities that submit the information and to the benefit of competitors.

[47] OEMs may be contrasted to aftermarket equipment manufacturers that produce replacement equipment.

particularly sensitive from a competitive standpoint and explained that vehicle manufacturers and their dealers would be placed at a particular competitive disadvantage should EWR warranty claims information be released. Vehicle manufacturers, often through their franchised dealers, compete with independent aftermarket parts manufacturers for sales of parts used in repairs. Those independent aftermarket parts manufacturers would gain a significant competitive advantage from having routine access to warranty claims experience on the detailed level of EWR reporting. As an example, they would know the trends in warranty experience on brakes of various makes and models. The value of such information to aftermarket parts manufacturers is evidenced by publications sold by the Motor and Equipment Manufacturers Association/ Original Equipment Suppliers Association (MEMA/OESA) that include forecasts and historical trend data where available. Aftermarket sales in the light duty market, the Alliance estimated, were $197 billion in 2005.[48] The sale of these data by aftermarket parts manufacturers illustrates the value of the data and the associated competitive harm from the release of a comprehensive collection of warranty claims experience. With this information, the Alliance explained, aftermarket parts manufacturers would know where to target their marketing efforts when vehicles come off warranty and benefit from this information at the direct expense of the vehicle manufacturers' competitive positions and their franchised dealers.[49]

The Alliance also stated that warranty claims should be withheld from public release on grounds of the existence of competition from new and potential new entrants to the U.S. market. In particular, it noted several Korean-based companies and the possibility of Chinese, Russian and European companies entering or reentering the United States market. Release of EWR information, it argued, would provide these potential competitors with access to an otherwise unavailable collection of comprehensive data about manufacturers' experiences with various components. These new entrants could benefit by reviewing EWR warranty data to estimate the probable ranges of warranty claims rates (and by inference, the associated costs), without having to expend resources to try to obtain this information privately, such as by paying for market research, or to take the risk of entering the market without the benefit of this information. Providing this field experience, the Alliance stated, would provide them with a free ride at the expense of the first manufacturer. The Alliance asserted that this is a competitive harm within the meaning of *Worthington Compressors*, 662 F.2d at 51–52.

GM, a manufacturer of both light vehicles and medium-heavy vehicles, pointed out it maintains the confidentiality of warranty data. It views the data as proprietary and does not disclose voluntarily warranty data of the type and scope submitted under the EWR rule.[50] GM explained that manufacturers will be harmed by the competitive use of EWR warranty data. Because the EWR warranty claims represent costs incurred by manufacturers, counts of warranty claims provide an index of a manufacturer's costs. Cost information is competitively sensitive.[51]

GM stated that since vehicle manufacturers increasingly purchase entire systems (i.e. all components used to perform a specific function such as steering, suspension, heating and cooling, occupant restraints, or seats) from suppliers, the disclosure of these data would provide competitor vehicle manufacturers with the warranty claims experience of systems made by various potential suppliers (e.g., for GM) that would give these competitors an advantage in selecting suppliers, at the expense of the manufacturer whose experience underlies the data.

Also, competitors could use these data to assess the effectiveness of a particular OEM's systems and processes to identify and resolve quality and lead time issues. As GM explained, the loss of confidential information would force it or another OEM to subsidize other OEMs, reducing their costs at GM's expense and destroying GM's competitive advantage. GM also pointed out that OEMs compete for replacement part sales with other companies and that the release of warranty claims data can be used by these aftermarket competitors to make decisions on what parts to produce, in what quantities and at what price. This, GM noted, is a source of competitive harm.

AIAM focused on the totality and comprehensive nature of the EWR data. AIAM's comments, which were discussed above in the context of consumer complaints, applied with at least equal force to warranty claims. AIAM stated that EWR warranty data would provide competitors useful information about the quality levels and the cost structure of the submitter. It would enable one company to use the experience of another to select an optimal design, production process and pricing strategy, while avoiding the cost and risk that would otherwise be encountered. We refer by reference to the discussion of AIAM's comments above.[52]

[48] The Alliance stated that this figure was based on estimates from the Automotive Aftermarket Industry Association. However, the Association estimates that the amount of business in this area is much larger—nearly $270 billion. *See http://www.aftermarket.org/* (Press Release No. AAIA–26–06 (June 15, 2006) (reporting that aftermarket business related to light vehicles for 2006–2007 increased to $267 billion).

[49] Comments by the MEMA/OESA lend further support to the value of the data. MEMA/OESA pointed out that the warranty data of original equipment manufacturer (OEM) suppliers are of particular value to replacement parts and equipment manufacturers and that their wholesale disclosure would likely cause these suppliers to suffer serious competitive injury if the data are disclosed. It explained that this information is highly sought and competitively sensitive marketing intelligence. Suppliers would undoubtedly benefit from the disclosure of this information.

[50] GM also explains that its own suppliers do not have full access to its warranty data and that any data that GM shares must be treated by those suppliers as proprietary information.

[51] GM supported the statements in its comments with several examples of the manner in which competitors could use the information to their benefit and the detriment of the entity submitting the data, including reduced testing and analysis, and performance issues in the field:

- A supplier offers a newly designed system to OEMs. While reverse engineering and testing by multiple OEMs is possible, those approaches do not duplicate field experience in numerous vehicles. If one OEM (OEM1) installs the system in vehicles, it would gain field experience and could use it to make better decisions about the future use of the system. If the EWR warranty claims data were disclosed, other OEMs would have access to some of the same information and would be able to make their decisions with less extensive testing and analysis.
- Two OEMs may purchase systems with similar designs from the same supplier, but the OEM with a greater sales/production volume may learn something about its performance first and use its knowledge to improve its product. If the other OEM has access to this company's information, it may be able to respond sooner and offset OEM1's competitive advantage.
- If two OEMs are using the same systems/components from the same supplier, differences in performance of those systems may be exposed in the field due to differences in how each of those OEMs integrated those systems/components into its vehicle designs. After reviewing its competitor's EWR warranty data, an OEM "may be able to alter its vehicle design integration sooner based on differences in field performance, which would offset the other OEM's competitive advantage.
- Warranty claims information on newly released vehicles can be used by competitors to decide what to emulate and what not to emulate without the expense of implementing those systems and processes.

[52] AIAM stated, for example, that a knowledgeable competitor can view this mosaic of information and reach valuable conclusions. The comprehensive body of EWR information facilitates manufacturer-to-manufacturer comparisons. EWR warranty data would provide competitors useful information about the quality levels achieved by the submitting manufacturer or its suppliers, both for

Nissan stated that, in addition to their role as an accounting system between manufacturers and their dealers that is designed to maintain customer satisfaction, a purpose of warranty systems is to quickly identify issues. Warranty data assist manufacturers in implementing production adjustments or service actions to ensure that products are operating as intended and meeting consumer expectations. Nissan pointed out, for example, that warranty claims help the company identify areas where the field experience information suggests further investigation. The vast majority of these issues, it added, are not safety related.

Nissan discussed the competitive consequences of the release of EWR warranty information together with consumer complaints and field reports.[53] Of particular note, warranty data would be valuable in the context of vehicle manufacturers' changes of suppliers. Competitors could, for instance, learn that the aggregate number of warranty claims in a category rose with a change of suppliers. Warranty data also provide insight into a company's warranty practices, particularly "good will" after a warranty expires.

TMA addressed warranty information as part of its overall comments on the competitive harm from disclosure of EWR information. It stated that public availability of detailed, comprehensive warranty data for each model and model year across numerous components and systems will provide significant market intelligence to competitors. TMA pointed out that the release of the information would provide competitors with valuable information to evaluate the performance, reliability and durability of various components, without the expense and risk associated with product development that would normally occur with field-testing efforts, while shortening the amount of time competitors need to market competing products, to the competitive disadvantage of the submitting manufacturer.[54]

Blue Bird asserted that EWR warranty data are highly proprietary and have a high level of competitive sensitivity. If these data were available, competitors would have a free ride in learning about warranty experiences for various vehicle systems, components, and parts. It also stated that their wholesale disclosure would result in competitive harm.

Harley-Davidson stated that warranty data are generally not disclosed by individual motorcycle companies. Warranty claims are part of continuous improvement, training programs and efforts to satisfy customers. The Motorcycle Industry Council echoed this concern, in light of the reservoir of information about customer satisfaction and quality concerns, and urged against the disclosure of warranty data.

Utility explained that it uses warranty claims to help identify potential problems early in the life of a trailer and spot trends associated with potential problems. By analyzing such data, with its suppliers, Utility is able to update components, incorporate new technologies and achieve cost savings. Such information in the hands of competitors would enable them to assess the in-use performance of component parts, which in turn could be integral components of its purchasing, pricing and sourcing decisions.

RMA, on behalf of tire manufacturers, asserted that NHTSA has treated tire manufacturer warranty adjustment data as confidential business information in the past. RMA asserted that because tire manufacturers use warranties as a marketing tool, adjustments are not necessarily an indication of tire performance.[55] It argued in favor of a class determination to cover all tire warranty adjustment data.[56] It further contended that since warranty data have been held confidential in the context of some investigations, the broader EWR warranty data base should be held confidential. As RMA observed, the tire industry competes tire line-by-tire line and even size-by-size. Tires are marketed by size in a given line.

Several manufacturers advanced another consequence of disclosure: Misleading and unfair comparisons of the data. The Alliance explained that the disclosure of the comprehensive compendiums of EWR information would be misleading to consumers and unfair to the submitting manufacturers because consumers would attempt to make comparisons of the performance of one model to another, across multiple model years, on a quarterly basis, which, as the Alliance observed, can not be done. Similarly, AIAM stated that public disclosure of the data would create a great potential for misunderstanding and mischaracterization. AIAM pointed out that automotive warranties vary in

technologies used in vehicles and in their accompanying production processes, which permits competitors to evaluate a particular technology, process or supplier, at a risk and cost that is lower than otherwise attainable. Using this information, AIAM explained, competitors might be able to base decisions and reach conclusions to pursue certain technologies to a substantial degree on their reviewing a submitter's EWR warranty information. The submitter may have expended substantial resources to help it decide whether to pursue a particular technology, while the competitor would gain a real world evaluation free of cost or the effort of a real world evaluation. This would impair the competitive position of the submitter. The EWR information would also provide a competitor with information about the submitters' cost structure. Claims are an important factor in the costs of various technologies. Competitors could evaluate this cost information and make decisions about whether to pursue various products or marketing strategies based on the submitter's costs without undertaking the risks of producing a vehicle with the particular technology.

[53] Nissan pointed out the competitive aspects of EWR warranty data. EWR warranty claims data help identify areas where field experience is showing an issue. The data can reveal market trends in both company costs and consumer reaction. Competitors could consider the data before deploying new technologies. They would rely on Nissan's information in making critical decisions on which technology or suppliers to use and when to enter the market and how best to market the technology to consumers. Competitors can use this information to determine market reactions, supplier or product changes, and new marketing efforts. Nissan further noted that this information is competitively valuable irrespective of whether the specifics of each claim are accessed by competitors because competitors can use these data to focus on a particular factor that can then be readily identified through reverse engineering.

Nissan explained that it develops warranty information only after significant investment in engineering and/or market research. Competitors, including suppliers, could use the information created by the significant investment of the manufacturer that submitted the data. These data could be used competitively against a submitter.

[54] TMA stated that the EWR data that medium-heavy vehicle manufacturers report are comprehensive as they involve numerous vehicle systems as well as fires and rollovers. This compendium of EWR warranty data, model-by-model and system-by-system, has significant competitive value. TMA stated that the disclosure of EWR data would provide competitors with valuable and previously unavailable insight into the field experience and performance of a submitter's entire product line and individual systems and components. There are numerous uses that competitors could make of these data to their competitive advantage. TMA characterized the EWR information as a data bank of quality control information that competitors could use to assess the in-use performance of parts and systems. A competitor could use the reporting manufacturer's field experience, good or bad, while avoiding the costs, effort and risks that the reporting manufacturer has incurred. It would be used in purchasing, pricing, and sourcing decisions, all of which would have competitive impacts. TMA also cited a discussion by GM of EWR warranty data as a competitively valuable cost index and explained how EWR warranty data can be used.

[55] RMA stated that it is a party to a consent order with the Federal Trade Commission prohibiting the association from collecting or disseminating competitively sensitive information, including warranty information. It submitted a copy of the order with its comments. The order reflects a concern about tire company competitors sharing information.

[56] RMA suggested that this rulemaking should apply to warranty claim data submitted during defect investigations. Such a proposal is clearly outside the scope of this rulemaking, which applies to EWR data. As RMA has maintained (correctly) in legal proceedings, the vast majority of EWR data are not indicative of defect trends. Brief at 5–6 and 22; Reply Brief at 1 in *Public Citizen* v. *Peters*, No. 06–5403 (D.C. Cir.). We are declining RMA's suggestion.

length and scope of coverage. A model having a higher claims rate may simply have a more comprehensive warranty than the second model, rather than inferior quality. Reports with simple comparisons could, in AIAM's view, affect the competitive positions of manufacturers in a way that was unfair. Also, TMA stated, with supporting explanation, that manufacturers and consumers could misuse the data to draw unfair and unsubstantiated and misleading comparisons regarding competitors' products.

JPMA added that the release of the encyclopedia of quality information encompassed in EWR data would cause submitters unwarranted competitive harm because the reports will include activities that are not safety related. This, JPMA said, will result in unwarranted disparagement.

RMA noted that warranty policies differ among tire manufacturers, and from tire to tire. Both consumers and the marketplace influence the terms of these warranties. TIA noted that the disclosure of warranty data can provide a misleading picture of a tire model's performance that would competitively harm the manufacturer. Workhorse Custom Chassis also asserted that the wholesale disclosure of these numbers would competitively harm EWR submitters in part because of perceived problems by potential customers.

Several entities acknowledged the limited releases of warranty information submitted by the manufacturers during investigations by NHTSA's ODI. The Alliance stated that the release of this limited information on specific models in a limited number of model years in investigations conducted by NHTSA does not support the release of the comprehensive compendium of information in EWR submissions. A limited release is much different from a competitive standpoint than the automatic release of the continually collected full compendium of quality and customer satisfaction information that is represented by the quarterly EWR submissions. Unlike EWR data, the release of data from investigations does not permit industry-wide comparisons of the quality or durability of all significant components across entire product lines and they are not a compendium of quality and customer satisfaction information developed over time. Thus, the Alliance concluded that the confidentiality of EWR warranty information should be maintained.

GM added that the limited disclosure of warranty information in other contexts, such as during defect investigations, typically involves a limited number of makes, models, and model years of vehicles and are limited to a narrow group of warranty codes. GM concluded that the effects of disclosing all EWR warranty data, are, therefore, much different from the effects accompanying the disclosure of the more limited warranty data the agency currently discloses.

Similarly, Nissan distinguished the EWR warranty claims data from those provided during ODI investigations, noting that the latter have limited competitive value compared to EWR warranty data because they do not offer the same market-oriented base of information as the comprehensive collection of trend data provided under the EWR rule.

By contrast, non-industry commenters argued in favor of disclosing all EWR warranty data. Quality Control and Public Citizen argued that the disclosure of this information would permit the public to make educated decisions regarding products. Quality Control stated that the EWR warranty data should be disclosed because they would be useful to the public in spotting potential defect issues. Public Citizen stated that the EWR rule requires no unnecessary details about manufacturer business operations or future plans. Quality Control and Public Citizen did not provide any facts disputing the competitive value of the data or the harms of disclosure explained by the industry commenters.

The literature also refers to the value of warranty claims data. At its core, warranty data are commercially valuable because of the myriad ways they can be used. *See* Tom Gelinas, *We Got You Covered*, Fleet Equipment, July 1, 2005, at 36 (noting ArvinMeritor's use of warranty data to perform many tasks, such as in the company's OnTrac Call Center's early warning system reports, which are used to help engineers "determine corrective actions on new or emerging product problems") and Huaiqing Wu, *Early Detection of Reliability Problems Using Information from Warranty Databases*, TECHNOMETRICS, May 3[illegible] 2002, at 120 (explaining the value of using warranty data "to detect potentially serious field reliability problems).

After carefully considering the comments and other information of record, NHTSA has determined that the release of EWR warranty claims numbers on light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers, and EWR warranty adjustment data on tires is likely to cause substantial harm to the competitive positions of the manufacturers that submit the data.

The EWR warranty data are a comprehensive compendium of warranty claims paid by manufacturers, for a broad range of products, generally by make, model year, going back for years and updated quarterly. They address numerous components and systems of vehicles and equipment and for certain vehicles include rollovers and fires. *See, e.g.*, 49 CFR 579.21(b)(2); 49 CFR 579.22(b)(2). The comprehensive nature of the compendiums of EWR data on warranty data is enhanced by their continuing content, which is updated by quarterly reports, and by their standardized reporting format. In general, these data reflect a repair or the replacement of an item. They can be used for industry-wide comparisons on these numerous systems and components. The amount of EWR warranty data is substantial. For the first 15 quarters of EWR data, an average of 65 light vehicle manufacturers per quarter reported 204 million warranty claims; an average of 87 medium—heavy and bus vehicle manufacturers per quarter reported nearly 11 million warranty claims; an average of 18 motorcycle manufacturers per quarter reported over 1.1 million warranty claims; an average of 285 trailer manufacturers per quarter reported 1.6 million warranty claims and an average of 27 tire manufacturers per quarter reported over 1.6 million warranty adjustment claims.

These warranty data are not publicly available. Automobile, system, component and equipment manufacturers closely guard their warranty data. The compendiums of EWR warranty data submitted by manufacturers could not be replicated at all or at least not easily at any price.

The EWR warranty data are a valuable indicator of the field experience of parts and systems in vehicles and tires.[57] The warranty data indicate the reliability and durability of various systems and components.

EWR warranty data are a valuable source of information about the quality of the range of products, system-by-system, over time sold by a manufacturer or its supplier. Warranty information is useful in assessing performance, reliability and durability issues. These data can be used to select an optimal design and production process.

Warranty claims help to identify potential problems early in the life of a vehicle. By analyzing such data, a

[57] While this discussion applies to child restraints, they are covered under the aggregated submission of consumer complaints and warranty claims.

company is able to update components, incorporate new technologies and achieve cost savings. Warranty data assist manufacturers in implementing production adjustments or service actions to ensure that products are operating as intended and meeting consumer expectations. Such information in the hands of competitors would enable them to assess the in-use performance of components, identify issues and avoid mistakes.

If EWR warranty data were released, competitors would likely review the data to evaluate a particular product, technology or process. The EWR data have great bearing on the selection of a design or production process. The data are particularly valuable on future design decisions. While the manufacturer submitting the data would have borne expenses associated with the introduction of the product and the collection of the data, competitors would benefit from reduced development costs, including costs of testing and analysis. Competitors would also face a risk of performance issues in the field that is lower than would otherwise be attainable. Wholesale disclosure of EWR warranty data eliminates the expense and risk of obtaining this information through field testing and trial and error. Using this information, competitors could base decisions to pursue certain technologies to a substantial degree on their reviewing a submitter's EWR warranty information. The competitor would gain a real world evaluation free of the risk or the effort and associated cost of a real world evaluation. Thus, the public availability of detailed, comprehensive warranty data for each model and model year across numerous components and systems will provide significant market intelligence to competitors. In short, the release of the EWR warranty data would enable one company to use the experience of another. The loss of confidential information would force the OEM that submitted the EWR data to subsidize other OEMs, reducing their costs at the submitter's expense and undercutting its competitive advantage. This would impair the competitive position of the manufacturer that submitted the EWR data.

The EWR data have a substantial bearing on purchasing decisions. EWR warranty information is useful in making decisions about purchases and the prices to be paid. Comparative component warranty, reliability, and durability experiences strongly influence component sourcing and pricing decisions. Since vehicle manufacturers increasingly purchase entire systems (*i.e.*, all components used to perform a specific function such as steering, suspension, heating and cooling, occupant restraints, or seats) from suppliers, the disclosure of these data would provide vehicle manufacturing competitors with the warranty claims experience of systems made by various potential suppliers that would give these competitors valuable information at the expense of the EWR data submitter. Similarly, tire manufacturers have acquired complete tires from producers in China. An important question is the relative quality of the suppliers' products in the field. Some will be more reliable and the subject of fewer warranty claims. Providing that field experience to other vehicle manufacturers gives them a free ride at the expense of the submitting manufacturer. EWR warranty data would provide significant intelligence to a manufacturer making a decision as to which supplier to choose and what price to pay. Competitors could also learn for instance that the aggregate number of warranty claims in a category rose with a change of suppliers.

Competitors would use the EWR data to follow warranty trends, which would provide a window into those competitors' costs and cost structure. Because the EWR warranty claims represent costs incurred by manufacturers, counts of warranty claims provide an index of a manufacturer's costs. Knowing whether costs for various systems are relatively high is useful and important information, because controlling costs is critical to the success of a business.

The fact that an owner returned to a dealer for service, further, is indicative of customer satisfaction, or the lack thereof. As one commenter put it, the EWR information is a reservoir of information about customer satisfaction and on the company's efforts to satisfy customers.

Warranty claims data would be valuable to competitors that produce, supply or sell aftermarket parts. Aftermarket parts are replacement parts for vehicles that have been sold to first purchasers. After the warranty on a vehicle expires, owners often have the vehicle repaired at shops other than dealerships. While franchised dealers generally must use service parts sold to them by vehicle manufacturers, independent repair shops have the option of using OEM parts or aftermarket parts made by independent manufacturers.

Vehicle manufacturers, often through parts sales by their dealers, compete with independent component manufacturers for sales of aftermarket parts used in repairs. Independent aftermarket parts manufacturers could use vehicle manufacturer warranty data in targeting their marketing effort when vehicles come off warranty. The independents could use the EWR warranty data to make decisions on what parts to produce, in what quantities and at what price. They could use the data in planning marketing strategies, preparing bids for new business and estimating the likely costs and pricing positions of vehicle manufacturers, with whom they compete for sales in the aftermarket. The warranty claim experience at the component level would be very useful to them, to the direct expense and detriment of the vehicle manufacturers' competitive positions.

The warranty data also provide insight into a company's warranty practices, particularly good will repairs after a warranty expires.

The EWR data would be especially valuable to new entrants. Several manufacturers are currently considering entering or reentering the U.S. market. These potential new entrants would be likely to benefit competitively from the substantial amount of information contained in EWR data by reviewing the warranty history of vehicle manufacturers currently in the U.S. market. These data would provide these potential entrants with valuable insight into the likely warranty costs and issues they would face if they decide to enter the U.S. market.

Quality Control and Public Citizen provided no facts disputing the competitive value of the data or the harms of disclosure raised by the industry commenters.[58]

The release of EWR warranty claims and warranty adjustment claims information submitted by manufacturers would have competitive consequences, as recognized in *Worthington Compressors*, 662 F.2d at 51–52. The large volumes of EWR warranty data are valuable and likely would be used by competitors. For the reasons discussed above, the release of this information would be to the significant benefit of the competitors of the submitters and to the significant detriment of the competitive position of the manufacturers that submitted the information.[59]

[58] NHTSA disagrees with the analogy that they attempt to draw to the release of warranty data in ODI investigations of problems in particular vehicles. See the discussion above regarding the different impacts of the release of consumer complaint data in ODI investigations and EWR consumer complaint data. The same applies to EWR warranty data.

[59] As an alternative basis for confidentiality, the disclosure the comprehensive compendiums of EWR warranty information would likely result in

Continued

Impairment

In addition to proposing to hold EWR warranty claims data confidential on grounds of competitive harm from their release, the NPRM proposed to hold these data confidential under the impairment prong of FOIA Exemption 4. As reflected in that notice, manufacturers have considerable latitude in establishing the scopes and durations of their warranties. They have largely unfettered discretion in providing good will repairs outside of warranties, which are counted under the EWR rule as warranty claims. It is beneficial to NHTSA if a manufacturer has broad warranty coverage. More input channels increase the robustness of the available data. Warranties have historically provided feedback on product performance that can be valuable to NHTSA in identifying problems, including potential defects that may point to the presence (or absence) of a safety problem. The agency seeks to ensure that it receives as much information as possible to identify possible defect trends.

As noted above, under the early warning reporting provisions of the Safety Act, NHTSA requires manufacturers of certain motor vehicles and motor vehicle equipment to provide reports on only the warranty claims that they pay, which are dependent in part on the scope of warranty coverage. *See* 49 U.S.C. 30166(m)(4)(B). NHTSA does not exercise control over the warranty coverage provided by manufacturers. In view of the fact that the quantity and comprehensiveness of the EWR warranty data depend in substantial part on the willingness of manufacturers to provide warranty coverage, NHTSA does not want to take steps that discourage extensive warranties, including good will.

Both industry and non-industry commenters addressed the agency's proposal. Industry commenters stated that a class determination for warranty claims was justified on the basis that disclosure would impair the agency's ability to obtain this information in the future. These commenters noted that in light of the limitations in 49 U.S.C. 30166(m)(4)(B), manufacturers could adjust their warranty programs, which would affect the amount of data NHTSA receives.

The Alliance explained that there is wide variation in manufacturers' programs. As to warranties, disclosure could cause manufacturers to reduce coverage. Manufacturers who offer longer or more generous warranty programs may curtail those programs, since generous warranty programs can generate a greater number of warranty claims and hence may cause a manufacturer's products to appear to be less reliable, even if they are not. As a result, the government's ability to obtain necessary information in the future will be impaired.

TMA stated that the release of warranty claims data will likely lead to the strict application of manufacturer warranty programs that would deny good will and customer accommodation claims falling outside of their terms. Also, because manufacturers offer warranty programs that vary in length and scope, Utility asserted that manufacturers with longer and broader warranty programs will inevitably have more information in their possession. If the data were disclosed, manufacturers with generous warranty programs will have an incentive to curtail their programs in length and scope thereby decreasing the volume of information submitted to NHTSA. This would impair NHTSA's ability to obtain such information in the future.

Blue Bird observed that the agency can reasonably anticipate that the quality and specificity of this information will be reduced if it is disclosed. It asserted that manufacturers would take measures to minimize their respective exposures.

AIAM asserted that the quality of the EWR information, including warranty claims information, provided to NHTSA would suffer in part because of the generation of additional claims accompanying the publicity of warranty data received and disclosed by the agency. These additional claims, AIAM asserted, would distort the quality of EWR warranty data NHTSA collects.

TIA argued that if EWR warranty information is not protected, companies will produce the bare minimum required. Protecting this information, it asserted, would ensure that the agency receives robust amounts of data.[60]

Public Citizen disputed the statements that if warranty data were disclosed manufacturers would alter their warranty and good will policies in order to report fewer claims. It asserted that manufacturers are under market pressures to offer good services and competitive warranties. In its view, the proposition that warranty practices would be altered was speculative and insufficient justification. It stated that the practice would only apply to potentially unsafe products.

In the discussion that follows, we will address the impairment that likely would result from the disclosure of EWR warranty data. As discussed above in the context of consumer complaints, Public Citizen believes that under the impairment prong of *National Parks,* the confidentiality of information is determined by a balancing test. While we do not accept Public Citizen's view of Exemption 4, in the alternative we will address a rough balance between the importance of the information and the extent of the impairment against the public interest in disclosure.

Warranty claims data have been and are a critical aspect of the data the agency considers to identify trends involving particular equipment and systems or components in a particular make, model and model year of a product. For this reason, in the EWR rule, NHTSA included warranty claims and adjustments in the reporting requirements. 67 FR at 45852–53. In fact, to obtain as much data as possible, the agency defined warranty claims to include not only warranty programs, but also extended warranties and good will. *Id; see also* 49 CFR 579.4 (definition of warranty claim). Warranty information is a valuable and useful pointer to areas that, after appropriate inquiry, may lead to defect investigations and ultimately to the remedy of safety defects. The more warranty information available to the agency, the more useful the warranty data will be in assisting the agency in identifying areas for further investigation. Warranty information is particularly important since it is generated early in the life of the vehicle,

consumer misuse. In *Worthington Compressors,* 662 F.2d at 53 n.43, the court permitted the consideration of consumer misuse of commercial information that is otherwise unavailable. The disclosure of the EWR information would be misleading to consumers and unfair to the submitting manufacturers. Consumers would attempt to make comparisons of the performance of one model to another across multiple model years, on a quarterly basis, which is problematic. The underlying foundations for the data are not the same. Different manufacturers have different warranty coverage, in terms of scope of coverage. Some have longer and more extensive coverage than others. The net result would be unfair and unsubstantiated and misleading comparisons. These comparisons would adversely affect the competitive positions of manufacturers in a way that would be unfair.

Public Citizen has asserted that this analysis amounts to an unwarranted product disparagement theory, and contends that the harm occurring from the disclosure of these data amounts to adverse public reaction, which is not a cognizable harm under Exemption 4. The agency disagrees with this attempt to recharacterize the harm. Since the EWR data are competitively sensitive for a valid reason under Exemption 4, other potential consequences such as adverse public reaction, do not dictate that we treat the information as non-confidential. *Occidental Petroleum Corp.* v. *SEC,* 873 F.2d 325, 341 (D.C. Cir. 1989).

[60] TIA also noted that smaller tire dealers, in response to the disclosure of the number of claims honored, will be inclined not to make any adjustments.

thus assisting in the prompt identification of potential defects.

The disclosure of EWR warranty claims and adjustments would be likely to significantly reduce manufacturers' willingness to provide expansive warranty coverage or to apply warranty policies in a more generous and less restrictive way. Longer warranties, extended warranties, good will, and more liberal applications of warranty policy, will increase the number of claims paid by manufacturers and, therefore, the amount of data available to the agency. Moreover, changes in warranty policy caused by a reaction to disclosure of warranty data would likely reduce the ability of the agency to compare current data with historical data and to explore apparent changes in the data.

Manufacturers have discretion in providing warranty coverage. For example, for marketing purposes, manufacturers may choose to make available to their customers warranties of longer duration and broader coverage (e.g., a company may offer a 5 year/50,000 mile warranty or a 3 year/36,000 mile warranty), making more warranty claims information available to the agency. Hyundai, for example, provides what it calls America's Best Warranty: 10 years/100,000 miles powertrain protection and 5 years/60,000 limited miles warranty covering nearly every new vehicle component. Toyota provides a 5 years/60,000 miles powertrain warranty and a 3 years/36,000 miles warranty covering all components other than normal wear and maintenance items. General Motors' limited warranty generally is for 3 years/36,000 miles, but its powertrain protection is for up to 5 years/100,000 miles, although some makes and models have different warranties. Ford's warranty generally is for 3 years/36,000 miles. Chrysler has a lifetime (for as long as you own your vehicle) limited powertrain warranty on some models. Extended warranties may be purchased for varying time periods. Some are not transferable. Thus, not only do warranties differ by manufacturer, they also differ based on the targeted market (e.g. luxury v. non-luxury), on system components and on the purchaser.

Similarly, companies can choose strictly to adhere to their warranty policy limits or, alternatively, they may adopt policies of avoiding customer dissatisfaction by covering repairs arguably no longer covered under warranty, either because they may not fall within the terms of the warranty or because they fall outside their time or mileage parameters. The disclosure of early warning warranty data is likely to reduce good will and customer accommodation since such efforts will increase the number of warranty claims.[61] Manufacturers would do this because if these data were made public, they could lead consumers to assume that the product was of poorer quality than a similar competing product made by a manufacturer with a stricter approach to allowing warranty or good will claims.

The disclosure of warranty claims and adjustment information is likely to limit manufacturers' offerings in extensive and extended warranties and good will. While the release of the information would not eliminate manufacturers' warranty programs, the disclosure of EWR warranty information likely would lead substantially to the contraction of current warranty policies. Less warranty data would be reported to NHTSA. This would result in substantially less robust data bases provided to NHTSA to screen for signs of early field problems. NHTSA's ability to identify potential safety defect trends would be impaired. Such a result would affect the agency's ability to carry out the early warning program.[62] Non-industry commenters provided no information countering the comments in the record pointing to the likelihood of this risk. In sum, the disclosure of EWR warranty claims, including warranty adjustment information, would be likely to impair NHTSA's ability to obtain necessary information in the future.

Such a response by manufacturers would also adversely impact consumers, who would be less likely to benefit from more generous warranty and good will policies as manufacturers impose restrictions in how they honor these policies. A class determination of confidentiality avoids these consequences.

On the other hand, the public would not receive significant, if any, safety benefits from the release of EWR warranty information. The non-industry commenters raised a safety argument. But they did not provide facts to support the argument. The EWR warranty data are not safety data. The vast majority of the data are not indicative of a safety defect trend. Thus, to the extent that a balancing is required, non-release of the warranty data would have very little impact on the public. It is outweighed by the benefit to the EWR program.

4. Field Reports

Field reports are communications from a manufacturer's representative or dealer about a malfunction or performance problem. *See* 49 CFR 579.4. The EWR rule requires larger volume manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles and trailers, and all manufacturers of child restraints to submit the number of field reports that they have received broken out, for each make and model, by specific component categories (*e.g.*, steering, brakes), and for certain reporting sectors, fire and rollover—all of which are binned by code. *See* 49 CFR 579.21(c), 579.22(c), 579.23(c), 579.24(c), 579.25(c). Above and beyond the reports of the binned numbers of field reports, these manufacturers must also provide copies of field reports other than dealer field reports and product evaluation field reports. *Id.*

The early warning field report data include field reports that are not safety-related and those that may involve safety-related defects. As noted above, when NHTSA published the EWR rule, the agency expressly contemplated that the manufacturers would report a large volume of data and that the agency would then screen it for possible defects. NHTSA's experience with EWR data has shown that the vast bulk of EWR field report information has not been indicative of defect trends.

In the NPRM, the agency proposed to make a class determination that field report information in EWR data would not be released to the public. 71 FR at 63744. The agency based this proposed class determination on both the competitive harm and impairment prongs of *National Parks*. We first address the likely competitive harm from the release of EWR field report information, then we discuss the impairment to the agency's ability to obtain as complete field report information that would follow the release of the information.

Competitive Harm

Numerous parties have provided information to NHTSA on the question whether the disclosure of EWR field report information would be likely to cause the submitting manufacturer to suffer competitive harm. This includes comments from the motor vehicle and

[61] We recognize that this is not a matter of corporate generosity. Some companies may choose as a matter of marketing or customer relations to apply their warranty policies liberally, thus generating additional numbers of warranty claims. Other companies may make decisions aimed primarily at avoiding potential warranty liability in the context of real or potential disputes. In either event, disclosing early warning warranty claims data may discourage customer satisfaction and early dispute resolution efforts.

[62] Limited disclosure of a manufacturer's warranty claims data in an investigation does not negate the competitive value of the data or the likely impact that wholesale (rather than piecemeal) disclosure would have on submitters.

equipment industry and non-industry commenters.

Commenters from various sectors of the automotive and automotive equipment industry addressed the competitive value and use of field report data. As noted above, there is competition in the auto industry. Manufacturers compete vigorously for sales. They compete in areas that include quality and consumer satisfaction, and expend substantial amounts of research money on quality and consumer satisfaction in the market for sales.

As noted in comments, the EWR information is a comprehensive compendium of field reports. Manufacturers have submitted a significant volume of field report data and copies of field reports to NHTSA under the EWR program. They cover numerous systems and components, as well as fires and rollovers for many reporting industry sectors (e.g., 18 for light vehicles and 22 for medium heavy vehicles). They cover makes and models going back a number of years and are updated quarterly. As noted by the Alliance, their value is enhanced by their continuing content, which permits a model-to-model comparison on the numerous systems and components in EWR reports. The release of EWR field report information would permit wholesale industry-wide comparisons of the quality or durability of all significant systems or components on models chosen for comparison. The data are not publicly available.

The Alliance pointed out that the EWR field report data are a comprehensive collection of information on the field experience of a manufacturer's vehicles on a make/model/model-year and component/system basis, pertaining to quality and customer satisfaction. The information is treated as proprietary.[63]

The Alliance observed that although the volume of field report information submitted is smaller than the volume of warranty claims, the information in the copies of field reports contains a great deal of detail. The field reports reveal the protocols used to identify, evaluate and remedy performance issues and would, in many cases, provide a detailed roadmap for performance issues with particular components and subsystems. The release of the information would allow competitors to improve on components and systems experiencing these performance issues, without incurring the full costs of doing so. This would cause competitive injury.

AIAM, as discussed above, stated that the competitive value of the EWR data results from the totality and comprehensive nature of the information, which gives it value. The information would enable one company to use the experience of another to select optimal product design, production process and pricing strategies, while avoiding the cost and risk that otherwise would be encountered through trial and error.

Similarly, Nissan explained that field reports serve as a useful means through which technical staff in the field can communicate with those who design, engineer, and manufacture the product. Through field reports, the company can discover and address issues, identify supplier successes or failures, and obtain useful information in developing future products. As with consumer complaints, field reports identify areas where field experience is showing an issue warranting further investigation.

TMA addressed field report information as part of its comments on the range of EWR information. TMA pointed out that the release of the information would provide competitors valuable information to evaluate the performance, reliability and durability of various components without the expense and risk associated with product development that would normally occur with field-testing efforts, while shortening the amount of time competitors need to market competing products, to the competitive disadvantage of the submitting manufacturer.[64]

Utilimaster explained that field reports contain performance, maintenance or durability issues. Blue Bird stated that EWR field report information has a very high level of competitive sensitivity. It expressed concern about competitor usage of it to the detriment of its competitive position.

Utility explained that field reports contain valuable "in-use" information about a manufacturer's product. The reports are used to identify and correct potential performance problems, with the intent of improving overall field performance. In the hands of competitors, it asserted, this information would enable them to avoid similar issues in their own products and eliminate the need to invest in research and development in improving their own products. This would result in a significant competitive advantage. Competitors could also incorporate field report information into their marketing strategies.

Harley-Davidson addressed its field reports as part of its fully developed contact system with its dealer network that enables it to do what is right and obtain a competitive advantage over its competitors. As a result, Harley-Davidson urged that this information not be released as a matter of course. The Motorcycle Industry Council similarly urged the agency not to disclose EWR field report information.

Equipment suppliers supported the vehicle manufacturers' statements. MEMA/OESA stated that field reports are often an invaluable source of information for companies in their efforts to improve product quality and performance. WABCO also expressed concern over the competitive impacts of

[63] The Alliance addressed the competitive consequences of disclosing EWR field reports as part of its comments on the disclosure of EWR data on consumer complaints, warranty claims and field reports. The Alliance emphasized that the comprehensive nature of these submissions—covering all makes and models over a multi-year timeframe that is updated quarterly—makes them a valuable compendium of quality and consumer satisfaction information that could not be replicated easily at any price and could be used by competitors. The Alliance added that the EWR data provide valuable insights into a given manufacturer's business practices and decisionmaking.

Citing *Worthington Compressors*, the Alliance pointed out that the release of information collected at considerable cost by an entity that submitted information to the Government could easily have competitive consequences. The submitters expend considerable sums to gather large volumes of EWR data and the release of it would be contrary to the competitive interests of entities that submit the information. The financial benefit resulting from this effort flows to those who obtain the data without significant cost or effort and use the data for their own purposes is contrary to the competitive interests of the manufacturers who submit the EWR information.

[64] TMA stated that the EWR data that medium-heavy vehicle manufacturers report are comprehensive; they involve 22 vehicle systems as well as fires and rollovers. This compendium of field report and other EWP data, laid out model-by-model and system-by-system has significant competitive value. There are numerous ways in which competitors could use these data to their competitive advantage. TMA characterized the data as a data bank of quality control information that competitors can use to evaluate the performance, reliability and durability of various components without the expense and risk associated with product development that would normally occur with field-testing and "trial and error" efforts, while shortening the amount of time competitors need to market competing products. TMA cited an example on the benefits of field testing that a competitor would receive. Also, a competitor could use the reporting manufacturer's field experience, good or bad, while avoiding the costs, effort and risks that the reporting manufacturer has incurred.

TMA stated that the disclosure of EWR field report data would provide competitors with valuable and previously unavailable insight into the field experience and performance of a submitter's entire product line and individual systems and components. TMA stated that competitors could use this information to assess the in-use performance of parts and systems. It would be used in purchasing, pricing, and sourcing decisions, all of which would have competitive impacts.

disclosure. It explained that field reports can be used by skilled and experienced engineers to spot trends in product reliability and trigger follow-up actions.

Industry commenters raised other concerns related to EWR field report disclosure. Although field report information can be useful in quickly finding possible problems, not all of this information is safety-related. As a result, the information primarily serves independent business purposes and merited protection from competitors.

The Alliance, TMA and others stated that the release of EWR field report data would result in misuse, as they had stated with respect to consumer complaints and warranty data. More particularly, they raised concerns that the disclosure of EWR field report data would lead to erroneous conclusions that would cause submitters competitive harm. Manufacturers and consumers could misuse it to draw unfair and unsubstantiated and misleading comparisons regarding competitors' products. *See* discussion above under consumer complaints.

The Alliance and others added that the release of limited field report information regarding particular concerns on specific models in a limited number of model years in investigations by NHTSA's Office of Defects Investigations does not support the release of the comprehensive compendium of information in EWR submissions. A limited release is much different from a competitive standpoint than the automatic release of the continually collected, full compendium of EWR information across virtually all makes and models, as is represented by the quarterly EWR submissions.

In contrast to industry commenters, the three non-industry groups advocated that field report data be released by the agency. In its comments, Public Citizen recognized that manufacturers place importance on field reports for staying informed about their products' performance and dealers' handling of problems. It added that, as with consumer complaints, field reports offer vital real world information for a company. Like industry groups, its comments addressed consumer complaints, warranty data and field reports together. As noted above, it contended that NHTSA did not explore the extent to which information is available publicly and it emphasized the value of the information to the public.[65] It noted that field reports vary in nature and quality.

Quality Control cited the statement in the NPRM that competitors could use EWR field report information to help them avoid potential problems or improve their products without the need to invest in research, development or actual market experience. It did not dispute this but stated that if true, consumers would not necessarily suffer injuries or economic losses. It claimed, however, that this is the agency's safety mission. Accordingly, in its view, field reports should be disclosed.

AAJ asserted that the disclosure of EWR field report data is vital to the public interest. It stated that disclosing this information would allow the public to be fully informed of all potential issues affecting a particular vehicle or piece of equipment and could lead to necessary safety enhancements. The non-industry groups did not refute the numerous specific competitive consequences that would result from the release of field report data stated by industry commenters.

After carefully considering the comments and other information of record, NHTSA has determined that the release of EWR field report data and copies of field reports on light vehicles, medium-heavy vehicles and buses, motorcycles, trailers, and child restraint systems is likely to cause substantial harm to the competitive positions of the manufacturers that submit the information.

The EWR field report data amount to compendiums of comprehensive information on field reports, both in terms of numbers, binned by make, model, model year and specified system or component, and in terms of field reports themselves. These cover an extensive range of makes and models of motor vehicles, for the reporting period and going back to the previous 10 years. They address numerous components and systems of vehicles and equipment and for certain vehicles include rollovers and fires. The comprehensive nature of the compendiums of EWR data on field reports is enhanced by their continuing content, which is updated by quarterly reports, and by their standardized reporting format. They can be used to compare numerous aspects of vehicles and equipment across industry sectors. The amount of field report information is substantial. For the first 15 quarters of EWR data, an average of 65 light vehicle manufacturers per quarter reported nearly 7.6 million field reports and submitted over 580,000 field reports; an average of 87 medium-heavy vehicle and bus manufacturers per quarter reported over 385,000 field reports and submitted over 26,000 field reports; an average of 18 motorcycle manufacturers per quarter reported over 134,000 field reports and submitted over 26,000 field reports; an average of 285 trailer manufacturers per quarter reported over 22,000 field reports and submitted nearly 500 field reports; and an average of 20 child restraint manufacturers per quarter reported over 11,000 field reports and submitted over 7,500 field reports.

The manufacturers that submit field report information expend considerable sums to initiate and review field reports. The data are not publicly available and are highly proprietary. The data could not be replicated.

Field reports reflect the in-use experience of a manufacturer's product collected by the company at its expense and with the intent of identifying problems associated with its products. Because of the depth of coverage required by the EWR rule, the field report numbers reveal a manufacturer's experience across its entire product line with respect to particular components and systems. These reports reflect a company's pursuit of feedback on a particular aspect of a product and can involve technical investigations into a problem detected through warranty, consumer complaint or other information available to the company. The field reports themselves often contain a great deal of detail and even those of lesser quality are valuable as an integral part of the whole compendium and for their identification of concerns.

The disclosure of EWR field report information would provide competitors with valuable and previously unavailable insight into the field experience and performance, including at times reliability and durability, of individual systems and components in a submitter's entire product line. Field reports reveal aspects of the performance of components and materials that appear to be problematic. Competitors could use EWR field report

[65] Public Citizen's Litigation Group, like some industry commenters, had addressed field reports with other EWR data. In its view, field reports are materials prepared for a defect investigation and are safety related and should be routinely disclosable because safety problems cannot provide a basis for finding substantial competitive injury. It added field reports vary in their quality and quantity, and should not be uniformly withheld. It also disputed that product disparagement is a basis for protection under Exemption 4. The group also stated that the agency has historically determined that this type of information is not covered by Exemption 4. Field reports are not prepared for defect investigations. They are prepared for business purposes as recognized in the EWR definition of field report and in industry comments. The statement that they routinely disclose safety problems is an unsupported assertion that is not correct. While they vary, they all meet the definition of field report and are commercially valuable to competitors. The allegations on product disparagement are addressed elsewhere.

information in assessing systems and parts with apparent shortcomings and identifying technological and engineering improvements that might better satisfy customers. If the information were released, competitors would gain product and component performance information, both in terms of numbers and from information in copies of field reports, developed at the cost of the submitting manufacturer, that they could implement. Thus, competitors would benefit, while the submitting manufacturer bore the cost.

In addition, the EWR field report data are a compendium of quality information of a manufacturer's products, model-by-model, system-by-system. These data provide in-use information on technologies. Competitors can study and run lab tests on a competitor's products. But these efforts do not inform the competition of the quality of a product based on operation in the field.

Competitors would use this information to evaluate particular technologies, including both technologies that have penetrated considerably numerous segments and newly introduced technologies, at a risk and cost that is lower than otherwise attainable, because the competitor would not have to develop that information. Using this information, competitors could base decisions to a substantial degree on their reviewing a submitter's EWR field report information. The EWR field report information would enable one company to use the experience of another in the selection of a design. It could also be used in the selection of a production process. The release of the data would permit broad comparisons of the quality or durability of components on vehicle models chosen for comparison. It would enable the person reviewing the materials to substantially avoid similar issues that gave rise to the field report. While the manufacturer submitting the information would have expended substantial resources in deciding whether to install a particular technology and associated design and testing as well as follow-up, the competitor would gain a real world evaluation without the time, expense and risk associated with product development that would normally occur with field-testing.

The generation of a field report has an associated cost and the fact that a manufacturer has completed a field report on a particular issue indicates that a manufacturer has made an investment of resources to discover and understand that issue. The competitor could use the information while avoiding the cost and risk that would otherwise be encountered. This would have competitive impacts.

Competitors can use the field report information to assist in their future purchasing (sourcing) decisions, including the technological approach, supplier and price. This information provides insights into whether a particular supplier has built durable and reliable systems and components.

Additionally, the EWR data provide valuable insights into a given manufacturer's business practices and decisionmaking, including, the methods used to collect field reports. Field reports, by their nature, reveal the process by which a manufacturer examines an issue of interest. Further, a field report comprises the protocols a manufacturer follows when examining a particular problem and helps identify whether a problem (safety or non-safety related) is present in its products. Such information is commercially valuable to competitors because it provides them with additional insight on how to improve their own processes in identifying potential problems.

EWR field report data are a valuable source of information related to customer satisfaction of vehicles. This data base provides information on perceived problems with the company's product, which gave rise to the field report. This is valuable to companies, which depend on satisfying customers. If the field report information were publicly available, competitors could and likely would use it to learn whether there is a market reaction to any new technology, supplier or product changes. The information would be valuable to competitors who may be considering deploying similar or competing technology. Competitors could rely on EWR information in making critical decision such as which technology or suppliers to use.[66]

Public Citizen recognized the value of the information. It did not, however, provide facts to refute comments by industry sources. AAJ and Quality Control recognized that other manufacturers can benefit from the disclosure of these reports by using them to mitigate similar problems they are encountering or by deferring or changing purchasing decisions of particular components or technology. They thought that the release of the data would benefit the public. However, they did not demonstrate how. Also, the benefit to the public is not a factor in assessing confidentiality under Exemption 4 of the FOIA.

The release of EWR field report data and the field reports submitted by manufacturers would have competitive consequences, as recognized in *Worthington Compressors*, 662 F.2d at 51–52. The volumes of EWR field report information are valuable and could be used by competitors. For the reasons discussed above, the release of it would be to the significant benefit of the competitors of the submitters and to the detriment of the competitive position of the manufacturers that submitted the information.[67]

Impairment

In addition to proposing to hold EWR field report information data confidential on grounds of competitive harm from their release, the NPRM proposed to hold this information confidential under the impairment prong of FOIA Exemption 4. As reflected in that notice, manufacturers may obtain and receive feedback on product performance in a variety of ways, and establish differing practices for field reports. The nature and level of effort expended by a company is

[66] Also, the EWR data are different from investigation data in scope and competitive impact. As discussed above, as for example in the context of consumer complaint data, data released in the course of agency investigations are limited. The release involves limited models and model years and specific alleged problems. EWR data amount to full compendiums, across makes, models and model years involving numerous systems. Thus the release of field report numbers in ODI investigations has no real bearing on release of EWR field report data. We note that NHTSA has withheld field reports obtained in investigations. *See* discussion above regarding the release of information obtained in investigations under consumer complaints.

[67] As an alternative basis for confidentiality, the disclosure of the comprehensive compendiums of EWR field report information would likely result in consumer misuse. In *Worthington Compressors*, 662 F.2d at 53 n.43, the court permitted the consideration of consumer misuse of commercial information that is otherwise unavailable. The disclosure of the EWR information would be misleading to consumers and unfair to the submitting manufacturers. Consumers would attempt to make comparisons of the performance of one model to another across multiple model years, on a quarterly basis, which can not be done. The underlying foundations for the data are not the same. Different manufacturers have different approaches to field reports, in terms of procedures and numbers of field reports generated. The net result would be unfair and unsubstantiated and misleading comparisons. These comparisons would adversely affect the competitive positions of manufacturers in a way that was unfair.

Public Citizen has asserted that this analysis amounts to an unwarranted product disparagement theory, and contends that the harm occurring from the disclosure of these data amounts to adverse public reaction, which is not a cognizable harm under Exemption 4. The agency disagrees with this attempt to recharacterize the harm. Since the EWR data are competitively sensitive for a valid reason under Exemption 4, other potential consequences such as adverse public reaction, do not dictate that we treat the information as non-confidential. *Occidental Petroleum Corp.* v. *SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989).

discretionary. It is beneficial to NHTSA if a company expends considerable effort. More inputs increase the robustness of the available data. Field reports provide feedback on product performance that can be valuable to NHTSA in identifying problems, including potential defects that may point to the presence (or absence) of a safety problem. The reports themselves, which are submitted under the EWR program, contain valuable technical information. The agency seeks to ensure that it receives as much information as possible to identify possible defect trends.

As discussed above, under the early warning reporting provisions of the Safety Act, NHTSA may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer. 49 U.S.C. 30166(m)(4)(B). In view of the fact that the quantity and comprehensiveness of the EWR field report data depend in substantial part on the willingness of manufacturers to collect this information, NHTSA does not want to take steps that discourage the collection efforts.

Both industry and non-industry commenters addressed the agency's proposal. Industry commenters stated that a class determination for field reports was justified on the basis that disclosure would impair the agency's ability to obtain this information in the future, citing 49 U.S.C. 30166(m)(4)(B). This limitation permitted submitters to expand or contract the scope of their programs generating field reports.

The Alliance explained that there is wide variation in manufacturers' programs that generate field reports. The Alliance stated that the potential for impairment is particularly significant in the context of field report information. By protecting field reports, NHTSA creates an incentive to encourage free text descriptions or other candid analysis in field reports. On the other hand, if the information were disclosed, NHTSA could reasonably anticipate that field reports would be less thorough or candid. As a result, the government's ability to obtain necessary information in the future will be impaired. The Alliance added that this would impact ODI defect investigations, which consider field reports.

AIAM stated that disclosure of this information would impair the agency's EWR program. It asserted that the quality of the information provided to NHTSA would suffer. The natural reaction of the individual who writes a field report would be to consider its appearance in the press or a contact by an investigator. This would affect the thoroughness and candor of the reports.

TMA explained that field reports play an important role in the medium-heavy truck segment. Manufacturers receive frequent reports from field personnel, fleet owners and dealers regarding vehicle issues, both safety and non-safety. Field reports often contain the drafter's evaluations or assessments of a possible system, component or performance problem. TMA verified the flexibility that manufacturers have in preparation of field reports. It added that the routine dissemination of this information would lead to fewer and less reliable reports available to the agency in the future to identify promptly potential safety defects promptly.

Blue Bird observed that the agency can reasonably anticipate that the quality and specificity of this information will be reduced if it is disclosed. It asserted that manufacturers would take measures to minimize their respective exposures to competitive harm.

Utility explained that manufacturers take the initiative to generate field reports in an effort to identify product defects and analyze possible defect trends. This information is generated and studied to improve product quality. But it could be used by plaintiffs to help file lawsuits against the submitting manufacturer. Utility asserted that manufacturers would react to this situation by generating fewer and less comprehensive field reports. This would hamper the agency's ability to obtain substantive field reports in the future.

Other commenters expressed similar concerns and recognized this impairment risk. Workhorse Custom Chassis explained that it relies extensively on reports from fleets to identify and correct problems but was concerned that the accuracy of those reports would be reduced if they are routinely disclosed. MEMA/OESA also asserted that the routine disclosure of field reports would impact the quality of these reports in future submissions.

On the other hand, Public Citizen disputed the assertion that if field report information were disclosed manufacturers would alter their field reporting practices. It asserted that manufacturers place importance on field reports for staying informed about the performance of their products and dealers' handling of problems. Field reports offer vital real-world information for a company. In its view, NHTSA had not undertaken an adequate investigation relating to manufacturers' field reports and had not made an adequate showing of the impairment from disclosure of field reports.

In the discussion that follows, we will address the impairment that would result from the disclosure of EWR field report data. As discussed above in the context of consumer complaints and warranty claims, Public Citizen believes that under the impairment prong of *National Parks*, the confidentiality of information is determined by a balancing test. While we do not accept Public Citizen's view of Exemption 4, in the alternative, we will address a rough balance between the importance of the information and the extent of the impairment against the public interest in disclosure.

Under the EWR reporting program, manufacturers report the numbers of field reports, separately, by model and model year, and by system and component, to NHTSA. They also provide field reports, except dealer field reports and product evaluation field reports. The significance of field reports is indicated in part by the EWR definition of field report. Under the definition, an alleged failure, malfunction, lack of durability or other performance problem has been identified in a written communication to the manufacturer from one of its employees, representatives, dealers, or a fleet. 49 CFR 579.4(c). Both before and after the promulgation of the EWR rule, ODI has reviewed numerous field reports over the years and has often found them to be technically rich. See 67 FR at 45856.

The magnitude of the numbers of field reports is important to NHTSA because our screening will look for trends based in part on relatively high numbers. These trends may result in inquiries to the manufacturers. In addition, field reports themselves generally contain information that provides insights.

As with other EWR data (complaint and warranty claims data), the agency cannot compel the creation of field reports. Their continued creation depends on whether a manufacturer chooses to create them. In light of the value of the reports and the discretion that manufacturers have in not generating them or in including less detail and fewer insights in them, the agency does not want to do anything to discourage manufacturers from preparing accurate and comprehensive field reports about apparent problems with their products. Nor do we want to detract from the candor and specificity with which field reports are written.

As noted in the comments, if these reports were disclosed, manufacturers likely would decide to generate fewer and less informative (less candid) field

reports. Manufacturers would be reluctant to have negative information appear in documents that are subject to routine disclosure. As a consequence, less information would be available to the agency in its efforts to identify potential safety defects promptly. The agency has required the submission of hard copies of certain field reports, as well as the numbers of all field reports, because the agency believes that this information will be especially helpful in identifying the existence of defect trends. Thus, the availability of less information would be inconsistent with our goals.

As made clear throughout the comments, disclosure of field reports would be likely to discourage candor on the part of field personnel and could adversely affect corporate policies and practices with respect to their preparation. One association was concerned about appearances of the documents in the media. This would have a chilling effect on candor. The available evidence shows that the disclosure of the field reports and the field report data would likely inhibit a significant feature of the agency's program to encourage the collection and reporting of information and to identify the potential existence of safety defects as soon as they begin to manifest themselves in the field. It would also reduce the amount of valuable information available to the agency during our defect investigations.

The field reports themselves are very important to the government. The numbers of reports are indicative of potential problems in numerous systems and components. Many of the reports provide text that is not conveyed by the numerical reports. The views of manufacturers' engineers and technicians in reports are often helpful to us. If they were disclosed, manufacturers would react by decreasing both the number of reports generated and the level of detail contained in these reports. Without them, we often would not gain a full understanding of the issues, at least not without a steep and time-consuming learning curve. The agency would be faced with attempting to conduct analyses with considerably less information from manufacturers. NHTSA's ability to identify potential safety defect trends would be impaired. Such a result would affect the agency's ability to carry out the early warning program.[68] In sum, the disclosure of the field information would be likely to impair NHTSA's ability to obtain necessary information in the future.

We recognize that some of the field reports would be of interest to some members of the public. But the public would not receive significant, if any, safety benefits from the release of EWR field report information. The non-industry commenters raised a safety argument. But they did not provide facts to support the argument. The EWR field report data are not safety data. The vast majority of the data are not indicative of a defect trend. And, standing alone, the EWR field report numbers simply indicate that there was a reported problem, by system or component. Thus, to the extent that a balancing is required, non-release of the data would have very little impact on the public. It is outweighed by the benefit to the EWR program. On balance, we are in a better position to address potential defects with as robust a set of field reports as possible, which benefit the public at large.

5. Common Green Tire Identifiers

The EWR rule requires reporting tire manufacturers to provide a list of common green tire data, including all relevant tire lines, tire type codes, stock keeping unit (SKU) number, brand names and brand name owners. 49 CFR 579.26(d). "Common greens" are tires "that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire, line names." 49 CFR 579.4(c). A green tire is an assembly of the components of a tire formed in a machine. The green tire is placed in a mold where the tire is given its final shape, including the tread pattern and information on the sidewall such as the tire brand, size and tire identification number. In the mold, the tire is cured; it is exposed to high pressure and heat (i.e., vulcanization). Tires made from a common green tire have the same fundamental construction and composition. Based on the mold, the finished tires may and often do have different outward appearances, such as different treads and markings to differentiate them from one other and, importantly, the tires receive different brand names. Tire manufacturers use the term "common green" to describe a family of tires that are produced from the same "before cure" specification but are cured in different molds. The practice of using "common greens" allows maximization of economies of scale in manufacturing tires. The common green tire information submitted by individual manufacturers reveals which tire lines share the same internal structural and rubber compound specifications and the relationships between manufacturers and private brand name owners (e.g., tires with names commonly owned by large tire retailers).

In the NPRM, NHTSA proposed to make a class determination that tire manufacturers' submissions of EWR common green data would not be released to the public. 71 FR at 63744 and 63749. This was based on the competitive harm prong of FOIA Exemption 4, as interpreted in *National Parks*.

Several submissions from RMA and a submission from Cooper Tire described the nature of the common green EWR data and explained the manner in which competitors can use the data and the competitive consequences of their disclosure. RMA stated that the information on common green tires in EWR data is not available to the public and can not be derived from any public source. It explained that the disclosure of this information would cause substantial competitive harm since it would allow competitors to know with exact certainty which tires have the same specifications even though many are sold under different tire brand names. Manufacturers would have insight into their competitors' marketing strategies, business plans, pricing data, and future product plans. RMA added that substantial competitive harm would result to the manufacturer from disclosing the specific business relationships between tire manufacturers and private tire brand name owners.

Cooper Tire's comments, which RMA re-submitted, included a study that detailed the nature of common green data. The study asserted that common green lists are confidential. The study indicated that tire manufacturers are required under the EWR rule to produce information on more than 24,000 tire lines. This information includes not only each green tire group produced, but each tire line originating from each green tire group. The study explained that green tires serve as the platform for the production of all tire lines and each individual tire SKU. It stated that the release of green tire groups and the identification of the green tire source for each finished tire would provide a complete and comprehensive road map to a tire manufacturer's production and marketing strategy. The study likened the release of this information as equivalent to the release of a tire manufacturer's business plan.

[68] Limited disclosure of field report numbers during agency investigations does not negate the value of the data or the likely impact that wholesale (rather than piecemeal) disclosure would have on submitters. Moreover, NHTSA has granted confidentiality to the field reports themselves.

RMA also noted that it has been NHTSA's practice to grant requests for confidentiality for common green information. RMA provided copies of relatively recent letters that responded to particular requests from tire manufacturers covering categories of information that granted confidential treatment to common green information submitted to the agency.

Apart from RMA and Cooper Tire, only Quality Control specifically addressed common green tires. Quality Control opposed confidential treatment for common green tires. But it did not contradict the tire industry's repeated statements regarding the use of common green tires in the tire industry, the unavailability of information on common green tires to the public sector, the competitive value of common green tires or the competitive harm that would result from releasing the information. Instead, Quality Control asserted that a consideration of how to treat common green tire information should include an evaluation of its usefulness to researchers and the general public of this information in the avoidance of deaths, injuries, and economic losses.

NHTSA has fully considered the comments and has reached the following conclusions. Green tires serve as the basic envelope of tire production. Common green tire lists identify the tires that share the same internal specifications and construction characteristics. Tire manufacturers treat their lists of common green tires as proprietary and competitively sensitive information. The EWR common green information is not publicly available and broadly applies across manufacturers' tire lines.

The release of common green tire information would identify the tires made from the range of common greens. The disclosure of this information would allow competitors to know which tires have the same specifications and construction. The release of green tire groups and the identification of the green tire source for each finished tire would provide a complete and comprehensive road map to a tire manufacturer's production strategy. It would inform competitors of a tire manufacturer's basic economies of scale in tire production. Precise insights from another manufacturer's approach would enable a competitor to adjust its own production to more effectively compete against a competitor's particular tire line.

Competitors would know which tires, sold under different tire brand names, are basically the same. The release of information linking green tires and finished tires, often of different labels, would inform competitors of a tire manufacturer's marketing approach. Manufacturers would, thus, have insight into their competitor's business plans and, with additions to and deletions from common green lists reported each quarter, future product plans. This information on tires that are basically the same can be used selectively by a manufacturer to compete against a particular tire line of another manufacturer and can harm the company that submitted EWR information by revealing less expensive but similarly constructed alternatives to more expensive tire lines. The release of common green information would also disclose the specific business relationships between tire manufacturers and private tire brand name owners. The foregoing demonstrates that the release of EWR common green tire information is likely to cause substantial harm to the competitive positions of the tire manufacturers that submit EWR information.

As noted above, Quality Control's comments did not contradict the tire industry's statements. Quality Control suggested the further consideration of an evaluation of the usefulness of the information for safety and economic reasons, but it did not provide any information in these regards. Nor did it demonstrate the relevance of such considerations under FOIA Exemption 4. As discussed above, Exemption 4 does not involve a balancing of competitive harm to the party that provided the information to an agency against possible societal interests such as research or provision of information to the public. Accordingly, we are adopting a class determination on EWR information on common green tires.

D. Class Determination Based on FOIA Exemption 6

The EWR rule requires larger vehicle manufacturers to submit the number of reports alleging that deaths or injuries occurred. These reports must contain the vehicle identification number (VIN) of the vehicle(s) allegedly involved in these incidents. *See* 49 CFR 579.21(b)(2), 579.22(b)(2), 579.23(b)(2), 579.24(b)(2). The agency's October 2006 NPRM proposed creating a limited class determination that would redact the last six characters of VINs from EWR death and injury reports, based on Exemption 6 of the FOIA. 71 FR at 63745 and 63749.

Each VIN consists of 17 characters. In general, the first eight of these characters denote the manufacturer and attributes of the vehicle including the make and type of vehicle (e.g., the relevant line, series, body, type, model year, engine type and weight rating). The ninth digit is a check digit. In the last eight characters, the first two represent the vehicle model year and plant of production, and the last six are the number sequentially assigned by the manufacturer in the production process. *See* 49 CFR 565.6 (detailing elements of the VIN code), SAE Standards J218 (passenger car identification terminology) *and* J272 (vehicle identification number systems).

VINs can readily be used to track down personal information on an individual who owns, or at one point owned, a particular vehicle. Such information can include not only the name and address of an individual but other information as well.

Exemption 6 of the FOIA addresses the withholding of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" to the subject of those files. 5 U.S.C. 552(b)(6). Several entities have addressed the privacy implications of release of the full VIN.

Both NHTSA and the Alliance documented their efforts in using VINs to obtain personal information on individuals.[69] When coupled with a fatality—or injury—producing incident, VINs can be used to identify the owner of the vehicle. The Alliance explained that VINs can be used to track down information on individuals. Specifically, it stated that it is relatively easy to determine the name, address, social security number, home telephone number and other personal identification information from a VIN. Because of the relative ease in obtaining this information from a VIN, the Alliance urged the agency to consider protecting VIN information contained in EWR submissions involving fatalities or injuries. The Alliance supported the Agency's proposal, with an analysis that addressed the elements for withholding information from disclosure under Exemption 6. After pointing out that both the Alliance and NHTSA had been able to employ widely available

[69] *See* NHTSA Docket 2002–12150, Item Nos. 58 (Alliance's discussion of obtaining Social Security Numbers using VINs) and 64 (websites enabling users to locate personal information using VINs). The agency examined a widely available legal database—WESTLAW—and several websites that offered to provide personal information on individuals using the VIN of a vehicle for a nominal fee. Using WESTLAW, the agency could determine the name, address, date of birth, and lien information of the vehicle owner using the full VIN. In view of this easy identification, the disclosure of full VIN information would jeopardize the personal privacy of individuals involved in EWR reports of fatalities and injuries arising from motor vehicle crashes.

databases to access personal information about the owner of a vehicle using a VIN, the Alliance asserted that the information met the threshold requirement of personal and similar files—information that applies to a particular individual. Next, it explained that the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Finally, the Alliance offered a balance of the privacy interests at stake with the public interest in disclosure. Under an Exemption 6 case it cited, the public interest is limited to shedding light on the government's activities. And, disclosing the last 6 digits of the VIN would not advance that interest. Based on its analysis, the Alliance recommended that the last 6 digits of VINs in EWR death and injury reports not be disclosed. TMA supported the exemption.

Public Citizen stated that it respected NHTSA's intent to protect individual citizen's personal privacy. However, it contended that exempting the VIN is unnecessary and advocated that NHTSA abandon its proposal. Public Citizen noted that VINs are visible to the public on the vehicle's dashboard and are publicly available through police reports. Public Citizen contended that the last six figures of a VIN serve the important role of allowing members of the public to see if their personal records have made it into the early warning data base and would aid the public in seeing if multiple records are in reference to the same individual vehicle or different vehicles of the same make.

Under Exemption 6, the information must fall within the category of "personal * * * and similar files." The EWR information on deaths and injuries is submitted by manufacturers electronically into an electronic file in the agency's ARTEMIS database. The VIN information can easily be used with readily available databases to identify the owners of the vehicles in crashes that resulted in deaths or injuries, as alleged in claims or notices to the manufacturer. There was no dispute in the comments that the threshold requirement of personal and similar files was met and NHTSA finds that it has.

If the threshold requirement is met, the focus of the inquiry turns to whether the disclosure of the records "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). This requires a balancing of the public's right to disclosure against the individual's right to privacy. The first step is an assessment of the privacy interests, if any, that would be threatened by the disclosure. In *Center for Auto Safety* v. *NHTSA*, 809 F. Supp. 148 (D.D.C. 1993), the court recognized the privacy interests in the names and addresses on consumer complaints received by NHTSA. The court noted that some of the complaints may refer to injuries of a personal and upsetting nature. It is possible that persons involved in such incidents would resent unsolicited intrusions into their experiences. *Id.* at 149. The same or similar interests exist here, as the EWR data at issue involves incidents that resulted in an injury or fatality. For example, it is foreseeable that the persons who could readily be identified from VINs or surviving family members would be contacted by attorneys and consultants, seeking involvement in legal activities related to the incident or information for a potentially related matter. Public Citizen did not address the interests of the individuals, who have been in an incident and had a relationship with a person who died in an incident or who was injured in an incident. We conclude that disclosure of the complete VINs in death and injury reports at issue would result in a substantial threat to individuals' personal privacy interest.

The second step is an assessment of the public interest in disclosure. Under Exemption 6, the concept of public interest is limited to shedding light on the government's performance of its statutory duties. *United States Department of Justice* v. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989); *National Ass'n of Retired Federal Employees* v. *Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989); cf., *DOD* v. *FLRA*, 510 U.S. 487, 497 (1994). With the limited redaction of part of the VIN under this rulemaking, the public would be able to review EWR information on claims for fatalities and injuries, including identification of the make, model and model year of the vehicle and the component or system implicated in the claim. This information apprises the public of significant information. Disclosing additional VIN information, with the sequential number unique to the vehicle, that would enable someone to identify the owner of the vehicle and other personal information would not, however, further serve the public interest. If disclosed, it would not answer the question of "what the government is up to." *Reporters Comm.*, 489 U.S. at 773 (1989).

Public Citizen contended that the last six figures of a VIN serve the important role of allowing members of the public to see if the incident in which they were involved is in the early warning database and would aid the public in seeing if multiple records are in reference to the same individual vehicle or different vehicles of the same make. This does not squarely address the question of what the government is up to. In any event, an interested person could review EWR data to see the date the make, model and model year of the vehicle, the first part of the VIN, the incident date, the numbers of deaths and injuries, the State where the incident occurred and the vehicle system or component that allegedly contributed to the incident. *See*, e.g., 49 CFR 579.21(b)(2). In the first 15 quarters of comprehensive EWR reporting, there have been 23,647 reports of deaths and injuries in vehicles based on claims and notices. That amounts to 1576 per quarter, or about 30 per State per quarter on the average. In view of the level of detail in EWR reporting, it is highly likely that if a reported incident matched the one that the person was involved in, it was reported by the manufacturer.[70] Similarly, multiple records are unlikely given the review of data by manufacturers before submission. Neither does the need to verify whether multiple records are duplicative outweigh these interests, particularly when other information related to those incidents would likely be disclosed, such as the time, date, and place of the incident. Individuals have a privacy interest when it comes to their involvement in a traumatic incident and it is not the province of outside parties to be the decision-maker in this regard. In any event, while of questionable relevance under Exemption 6, we note that redaction of the last six characters provides sufficient information for interested parties to determine a vehicle's identity down to its engine type and plant of production using the first 11 characters of the VIN. Using this information, the public can still ascertain whether a particular type of vehicle may be involved in a potential vehicle safety issue.[71]

[70] As a practical matter, individuals seeking this type of information on their own cases are free to file a Privacy Act request with the agency to confirm the inclusion of their cases in the EWR database.

[71] Public Citizen also stated that the VIN is visible on the dashboard and that police reports are publicly available. However, it did not explain the likelihood of the public finding a vehicle, particularly if it is involved in a fatality and may have been sent to a salvage yard. Public Citizen has also not addressed the fact that in numerous states police reports are not generally available. *See*, e.g. Cal. Veh. Code section 20012 (placing limits on who may obtain accident reports); Mont. Code section 61–7–114 (restricting access to accident reports); and Ore. Veh. Code § 802.220 (limiting disclosure of accident reports)

The final step in an Exemption 6 analysis is weighing the competing privacy and public interests against one another. *See Ripskis* v. *HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984). In the case of the EWR VIN information, there is a strong privacy interest in not being contacted about a death or personal injury, which often involves personal distress. On the other hand, the public interest, in terms of information that reveals what the government is up to is at most, minimal. Thus, on balance, NHTSA has concluded that the privacy interests far outweigh the public interest. The balance is similar to that in *Center for Auto Safety* because there is no ascertainable public interest of sufficient significance or certainty to outweigh that right. 809 F. Supp. at 150.[72] The disclosure of the full VIN would constitute a clearly unwarranted invasion of personal privacy. As a result, the balancing required by Exemption 6 cuts in favor of protecting the privacy interests of those individuals over the interests that others may have in learning their identities. NHTSA is, therefore, according confidentiality to the last six digits of VINs under FOIA Exemption 6 using a class determination that is set out separately from the other EWR-based class determinations.

NHTSA is adopting a new class determination in 49 CFR Part 512 Appendix D that applies only to those VINs that are provided in EWR submissions and does not apply as a rule of general application to the agency's treatment of VINs in other instances.

IV. Exemption 3

The Rubber Manufacturers Association (RMA) has historically maintained that NHTSA is precluded by statute from releasing all EWR data, subject to a limited exception. RMA has relied on a disclosure provision of the TREAD Act, 49 U.S.C. 30166(m)(4)(C), which provides:

> Disclosure.—None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.[73]

[72] *See generally Horowitz* v. *Peace Corps*, 428 F.3d 271, 278–79 (D.C. Cir. 2005) (discussing balancing required under Exemption 6 and indicating that "seemingly innocuous information" can be subject to the Exemption's protection).

[73] Sections 30117(b) and 30118 through 30121 involve the statutory remedy and recall requirements under the Safety Act.

RMA has asserted that this provision is a FOIA Exemption 3 statute and therefore, NHTSA is precluded from releasing the data.

RMA's views were rejected by the U.S. District Court for the District of Columbia in *Public Citizen* v. *Mineta*, 444 F.Supp.2d 12, 16–18 (2006). In the October 2006 NPRM, we noted that the judgment in that case is on appeal to the U.S. Court of Appeals for the District of Columbia Circuit (No. 06–5304). 71 FR at 63745. We stated that should the Court of Appeals reverse the District Court, the agency may proceed to issue a final rule exempting EWR data from disclosure in a manner consistent with the D.C. Circuit's decision or terminate the EWR Appendix C portion of this rulemaking as unnecessary.

We did not seek comment on the Exemption 3 issue. RMA provided comments nonetheless. Apart from scope issues, the agency rejects RMA's views. As our rationale, we incorporate by reference the Brief for the Federal Appellee in the pending appeal in *Public Citizen* v. *Peters* (No. 06–5304) (filed July 6, 2007).

V. Other EWR Data

The data elements of the EWR rule were established in July of 2002. The 2003 CBI rule that was remanded by the district court did not resolve the confidentiality of EWR information on deaths and injuries, which is based on claims and notices, or the confidentiality of property damage claims. Those matters were left to individual manufacturers to pursue through individual requests for confidentiality should the manufacturers choose to pursue them. The October 2006 NPRM did not propose to include information on deaths or personal injury, or property damage claims (collectively claims data) as part of our Exemption 4-based class determinations. We stated that these items involve a collection of information, many pieces of which are publicly available in court documents and newspaper articles.[74]

RMA submitted comments. RMA's comments are outside the scope of the NPRM. Should RMA or its members seek a rule on this issue, they should file an administrative petition for rulemaking. See 49 CFR Part 552. To be clear, NHTSA is not deciding in this notice that EWR claims data is or is not confidential. Insofar as a manufacturer desires confidential treatment for EWR claims data, it should submit a request for confidentiality for those data to NHTSA in accordance with 49 CFR Part 512.[75]

[74] See, e.g. *http://www.pbs.org/wgbh/pages/frontline/shows/rollover/etc/synopsis.html* (noting the number of deaths attributed to failing Firestone tires mounted on Ford Explorer vehicles), *http://www.charlestonbusiness.com/pub/12_12/briefs/6704-1.html* (reporting on lawsuit arising from an alleged failure of a Yokohama tire), *http://www.cbc.ca/fifth/main_tire.html* (noting the number of deaths related to alleged failures involving Goodyear tires compiled by CBC News and *http://www.cbc.ca/consumers/market/files/cars/dangeroustires/index2.html* (covering tire design problems and mentioning a multi-million dollar award against Dunlop).

VI. Identification of Confidential Business Information Located in Electronic Files

The NPRM proposed amendments to the agency's regulations for requesting confidentiality for certain information submitted to the agency on electronic media. *See* 71 FR at 63736. In practice, NHTSA's Confidential Business Information regulations have been applied most often to the submissions of information in the context of enforcement and rulemaking actions and to other submissions required under the agency's regulations, as well as to voluntary submissions. NHTSA proposed to add new requirements for identifying confidential information submitted in electronic form. In the last few years, increasingly, the information that is the subject of a request for confidentiality has been submitted on CDs and DVDs, rather than on paper. Under the existing regulations, the submitter is required to mark each page of a paper submission containing information claimed to be confidential with the word "CONFIDENTIAL". 49 CFR 512.6. In addition, brackets are to be used to designate information claimed to be confidential where the entire page is not claimed to be confidential. *Id.* Under the proposed rule, electronic submissions would be marked with sequential page numbers or identifiers, confidential materials within these submissions would be marked with brackets, individual pages

[75] The manufacturer that requests confidential treatment should address whether the information regarding these categories is already available through publicly accessible court documents. See, e.g. *Lambert* v. *Goodyear Tire & Rubber Co.*, Case No. 1:03–CV–00382 (W.D. Mich.) (June 11, 2003) (death case), *Bayanay* v. *Continental Tire*, Case No. 6:02–CV–00205 (E.D. Okla.) (April 22, 2002) (death case), and *Swank* v. *BridgestoneFirestone*, Case No. 1:01–CV–00982 (M.D. Ala. 2001) (property damage and injury case). The manufacturer should also address the obvious legal problem of granting confidentiality for information that is already publicly available. *See Niagara Mohawk Power Corp.* v. *Dep't of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999). In any event, in light of the availability of this information and its questionable utility by competitors, the manufacturer likely will have a substantial burden in showing that disclosure of this collected information would result in substantial competitive harm.

would be marked as confidential as needed, 71 FR at 63746, and files that cannot be marked internally would be named to ensure that NHTSA can properly identify material that is claimed as confidential. *Id.* We noted that pagination requirements are not unusual and consistent with the rules governing Federal court filings. *See* 71 FR at 63746 (citing requirements of the Federal Rules of Appellate Procedure).

The agency's proposed amendment to section 512.6, which would replace section 512.6(b)(3), read as follows:

(c) Submissions in electronic format.

(1) Persons submitting information under this Part may submit the information in electronic format. Except for early warning reporting data submitted to the agency under 49 CFR 579, the information shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (e.g., the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the word "CONFIDENTIAL".

(2) Pages and materials claimed to be confidential must be designated as provided in § 512.6(b)(1)–(2). Files and materials that cannot be marked internally, such as video clips or executable files, shall be renamed prior to submission so the characters "CONF" or the word "CONFIDENTIAL" appear in the file name.

(3) Each page within an electronic file that is submitted for confidential treatment must be individually numbered in the order presented with a sequential numeric or alpha-numeric system that separately identifies each page contained in that submission.

(4) Electronic media may be submitted only in commonly available and used formats.

The Alliance and AIAM submitted comments addressing the proposed changes to Section 512.6. Both commenters largely agree with the proposed changes. AIAM observed that the proposal is workable as is and did not foresee any problems with the changes. The Alliance raised questions about the practicability, feasibility, and desirability of the proposed requirement that electronic pages be marked "confidential" and that brackets be inserted around information claimed as confidential. The Alliance voiced similar concerns about the proposed requirement that pages in electronic submissions be marked with page numbers or other sequential identifiers.

The Alliance asserted that the contents of some electronic submissions cannot be marked with brackets, be stamped as confidential or otherwise be numbered or marked with sequential identifiers. According to the Alliance, files such as video clips or executable files do not have individual pages, cannot be altered, and, therefore, cannot be marked. Other files, such as spreadsheet or database files, do not have page breaks or do not have the capacity to "bracket" information. As NHTSA often requests spreadsheet or database files in their "native" format, the Alliance noted that complying with such requests precludes marking these files unless the submitter converts the files to another format. In the Alliance's view, the agency's analogy in its proposal to the Federal Rules of Appellate Procedure, which require that all submissions to the court be paginated, is inapt because court documents are still submitted on paper.

According to the Alliance, its member companies and NHTSA both wish to ensure that confidential data are properly identified when submitted, that NHTSA can properly review and segregate confidential data, and that the burdens placed on those submitting the data are reasonable. Given these goals, the Alliance notes that a variety of means could produce the same result as NHTSA's proposal.

The Alliance urged the agency to be both flexible and pragmatic when considering the requirements of the final rule. If files or data cannot be marked with brackets or individual page notations, it suggested that submitters be allowed to designate materials for which confidentiality is sought in the request letter and, in this fashion, refer the agency to indices or placemarks that exist inside the file in their native format. Therefore, the Alliance stated that confidential portions of video files could be identified by the "running time" data embedded in the file. Confidential data within a spreadsheet could be identified in a confidentiality request letter designating only those columns or rows for which confidential treatment is sought. Noting that the language proposed for Section 512.6(c)(3) appeared to contemplate that page numbers or sequential markings need only apply to those pages for which confidential treatment is sought, the Alliance suggested that submitters could provide NHTSA with sufficient information to identify confidential data by numbering or marking only those pages. An alternative reading—that all pages in an electronic submission requesting confidentiality must be marked—would, in its view, be unduly burdensome.

Consistent with these views, the Alliance suggested an alternative version of the agency's proposed regulatory text. These alternative versions modified both Section 512.6(c)(2)—which contains the agency's proposed requirements for brackets and marking individual pages—and Section 512.6(c)(3)—setting forth NHTSA's proposed requirements for page numbering—by altering Section 512.6(c)(2) to address page numbering and Section 512.6(c)(3) to address brackets and page marking. In particular, the Alliance suggested the following language:

(c) Submissions in electronic format.

* * * * *

(2) Electronic files with content that can be marked with page designations must be so marked so that any page can be located using the file name and page number. Files with content that has page designations shall be identified in the request for confidentiality by file name and page numbers or, at the option of the submitter, by sequence number. If files cannot be marked with page or sequence number designations, then the portions of the files that are claimed to be confidential shall be described by other means in the request for confidential treatment.

(3) Electronic files with content that can be marked must be marked "Confidential" at the top of each page. If only a portion of the content of a page is claimed to be confidential, the confidential portion shall be designated by brackets. If the confidential portion cannot be marked with brackets, it must be identified by another method, such as font change or symbols, whenever feasible. The submitter must use one method consistently for electronic files of the same type within the same submission and the method used must be described in the request for confidentiality. Files and materials that cannot be marked internally, such as video clips or executable files or files provided in a format specifically requested by the agency, shall be renamed prior to submission so the characters "Conf" or the word "Confidential" appear in the file name.

The Alliance's suggested language differs from the agency's proposal in several ways. Marking file content with either page numbers, brackets or the legend "Confidential" is required only when that content can be marked. Where the content cannot be marked, submitters may choose other means of identification, including changing existing attributes of the content, if these changes are clearly and consistently identified in the submitter's request for confidential treatment.

We are modifying our earlier proposal to address the issues raised by the Alliance and a governmental issue. The agency agrees that some materials do not have paper equivalents or are not, particularly when submitted in their original or "native" format, capable of being marked with brackets, page notations, page numbers or other sequential identifiers. We also concur in the Alliance's interpretation that our proposed Section 512.6(c)(3) would require numbering or sequential marking of only those pages or items for

which confidential treatment is sought. The Alliance's suggestions for page numbering or sequential marking provide for accurate identification of confidential information within electronic submissions.

However, in a number of respects, the revisions suggested by the Alliance lack sufficient specificity to ensure that confidential materials will be adequately identified in a consistent manner. The Alliance's suggested revision to proposed Section 512.6(c)(2) provides that content files that cannot be marked with page numbers or sequential marks be "described" by other means. However, the categories of materials that "cannot" be marked are not adequately defined by the Alliance's revision. Also, the "other means" suggested by the Alliance does not provide sufficient guidance to submitters. The agency also notes that when such other means are used, these other methods may only be ascertained through examination of the request for confidential treatment, which often becomes separated from the materials, and not by examination of the information alone.

There have been other questions pertaining to whether within governmental parlance the word confidential refers to confidential business information.

To address the foregoing issues, the final rule specifies that pagination or sequential marking is required, except when files are submitted in their "native" format and only to the extent that the native format does not contain, or allow for, any internal indices. For example, a video file does not readily lend itself to marking with page numbers. Such files do, however, contain indices in their native format in the form of individual frames within the file itself. Spreadsheets contain internal indices in the form of columns and individual rows. In both cases, existing indices within the files serve as a substitute for sequential numbering. The final rule requires that those submitters seeking confidentiality of files in their native format must state that the native format precludes sequential page marking and specify an alternate means of identifying specific confidential material within the file. If internal indices exist, the submitter must provide an explanation of how these internal indices are arranged and apply to data within the file. We are also adding a requirement that an electronic copy of the submitter's request for confidential treatment be provided on the media containing the confidential data to reduce the possibility that explanations of alternative marking schemes become separated from the data.

We are also adopting the proposed requirement that electronic media may be submitted only in commonly used and available formats to address occasional problems the agency has encountered when attempting to review files prepared using uncommon software applications, such as proprietary databases. To address requests for confidentiality, we must be able to open the files and examine the data submitted. We received no comments addressing this issue. This requirement would be satisfied by the submission of data in widely used formats such as PDF, Word documents, and Excel spreadsheets.

As proposed, requests for confidential treatment for information submitted to the agency must provide the information claimed as confidential in a physical medium such as a CD–ROM. They may not be sent to the agency by e-mail. No comments were received addressing this issue either. There have been occasions where manufacturers have attempted to submit information claimed as confidential via e-mail. Not only was this action not allowed under the existing regulations, but tracking requests for confidential treatment submitted in this manner is very difficult and far more prone to error than a physical submission. Permitting submissions and accompanying requests for confidential treatment in this manner affects the agency's ability to provide timely responses to these requests and the Chief Counsel's office's ability to transmit the information to the relevant office within NHTSA. In addition, the Department of Transportation limits the overall amount of e-mail information that an individual may maintain, which presents problems, including storage issues. We also have encountered difficulties in receiving attachments to e-mails that contain very large amounts of information. To ensure NHTSA's ability to properly track and handle this information, we are requiring that the information be placed on appropriate physical media, such as CDs, when requesting confidential treatment.

Finally, a question has been raised whether the word confidential could result in confusion. NHTSA's longstanding view has been that the word confidential means confidential business information as used in the title of 49 CFR part 512 *Confidential Business Information* and that the focus is on information that is exempt from disclosure under FOIA. In another context, involving national security information, the word confidential has a different meaning. To make clear that we are dealing with confidential business information, we are adjusting the proposed regulation to use the words confidential business information instead of confidential.

The foregoing changes are included in a new 49 CFR 512.6(c) that replaces 49 CFR 512.6(b)(3).

VII. Updated Agency Contact Information

In June 2007, the agency's offices moved to a new location. The current version of 49 CFR part 512 does not yet reflect this change. In today's notice, the new mailing address has been substituted at 49 CFR part 512.7. The agency's change of address does not require notice. 5 U.S.C. 553(b).

VIII. Data Quality Act Issues

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (the "Data Quality Act") requires agencies to take certain affirmative steps to maximize the utility, objectivity, and integrity of data agencies disseminate to the public. This final rule establishes a number of class determinations applicable to those portions of the early warning reporting information determined likely, if released, to cause substantial competitive harm and to impair the government's ability to obtain data necessary to the operation of the agency's defect detection and remediation program. Such submissions are entitled to confidential treatment under Exemption 4 of the Freedom of Information Act.

RMA asserted that the class determinations that we proposed failed to satisfy the Data Quality Act. It contended that the Data Quality Act provides an independent basis to prohibit the disclosure of the EWR data the agency determined is not within the purview of Exemption 4. The RMA believes that the agency's release of EWR data would reasonably suggest to the public that the agency agrees with the data and would be relied on by the public as official NHTSA information. The RMA asserted that the EWR information is subject to the Data Quality Act because it is factual data prepared by third parties, and in the RMA's opinion, not covered by any of the 12 exceptions contained in the DOT guidelines. The RMA also argued that the final rule does not meet the Data Quality Act's "utility" requirement and as written would not present manufacturers" data in an accurate, clear, complete and unbiased manner and in a proper context.

We disagree. Under today's rule, most of the categories of EWR data will not be disclosed to the public, except under 49 U.S.C. 30167 or court order. We note that the EWR information not addressed in today's rule—reports of claims and notices of deaths, personal injury and property damage and some production numbers—involves factual matter and does not constitute data relied on or developed as part of a determination by the agency. Also RMA's members may submit individual requests for confidentiality regarding these data. Accordingly, this rule does not implicate Data Quality Act concerns.

Moreover, even if EWR data were subject to the Data Quality Act, the early warning program is not subject to the requirements of the Data Quality Act because it falls within an express exemption. The OMB guidelines define the dissemination of information as agency initiated or sponsored distribution of information to the public, but does not include responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. (67 FR 8460). Thus, the Data Quality Act does not apply to data that the agency is required to disclose under FOIA, which would be the case with the quarterly reported death, injury, and property damage claim numbers provided under EWR, but only to information that the agency discloses as part of an agency-initiated or sponsored dissemination of information.

Consistent with OMB's guidance, the Department of Transportation developed a set of guidelines on information dissemination, which includes an exception for "responses to requests under FOIA, Privacy Act, the Federal Advisory Committee Act or other similar laws." [76] The information not covered by a class determination of confidentiality, or otherwise protected by a FOIA exemption, must be released under FOIA.

The process established by Part 512 allows the agency to make available to the public information subject to FOIA by determining in advance which information is entitled to protection under a FOIA exemption. The FOIA provides the analytic foundation for the determination of which data will be publicly available and which will be protected from public disclosure. Accordingly, this information qualifies under the FOIA exception created by the OMB guidelines.[77]

Finally, in *Public Citizen* v. *Mineta* (D.D.C. Civil No. 04–463), RMA dismissed its Data Quality Act claim regarding the CBI rule that ultimately was remanded.

IX. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

X. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735 (Oct. 4, 1993)), provides for making determinations whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures (44 FR 11034 (Feb. 26, 1979)). This rulemaking action is not significant under E.O. 12866, "Regulatory Planning and Review" or the Department's regulatory policies and procedures. There are no new significant burdens on information submitters or related costs that would require the development of a full cost/benefit evaluation. As indicated in the preamble, this document would remedy a deficiency identified by a Federal court and does not raise any new legal or policy issues. This rule does not present novel policy issues. Instead, it resolves issues that have been addressed in the past, including in litigation.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule will not have a significant economic impact on a substantial number of small entities. This rule will impose no additional reporting obligations on small entities beyond those otherwise required by the Safety Act and the early warning reporting regulation. This rule addresses the agency's treatment of early warning reporting data and clarifies procedures for all submitters, including small entities, with regard to confidentiality. The rule protects certain categories of early warning reporting information from disclosure to ensure consistency in the treatment of information that is likely to cause substantial competitive harm to submitters if disclosed.

In addition, small entities, which generally submit items in hard copy format, are expected to and may continue to do so. Those wishing to submit information in electronic format would be able to do so using the procedures that we are clarifying in this proposal. Therefore, a regulatory flexibility analysis is not required for this action.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). This action will not have "federalism implications" because it will not have "substantial direct effects on 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 section 1 of the Executive Order.

[76] DOT's Information Dissemination Quality Guidelines, at 12 (Effective Oct. 1, 2002). The DOT guidelines are available for public inspection at *http://dms.dot.gov* (click on the "Data Quality" link and then "guidelines").

[77] The FOIA mandates that the agency make broadly available information that has already been the subject of a FOIA request granted by the agency. An agency must make available for public inspection and copying "records * * * which have been released to any person [under FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. 552(a)(2)(D). In addition, under the Electronic-FOIA Amendment of 1996, the information, if created after November 1, 1996, must be made available in an electronic format to the public. 5 U.S.C. 552(a)(2)(E).

D. Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 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 more than $100 million annually (adjusted for inflation with a base year of 1995). This rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

F. Paperwork Reduction Act

The existing requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing Part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). At the time that we submitted the prior requirements of Part 512, these requirements were approved through January 31, 2008. This rule does not revise the existing currently approved information collection under Part 512. Instead, the rule contains the same requirements as before and only clarifies procedures as to electronically-submitted items to the agency for which confidentiality is sought. It does not require electronic submissions.

G. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This action does not meet either of these criteria.

H. Regulation Identifier Number (RIN)

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

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Highway Traffic Safety Administration amends 49 CFR Chapter V, Code of Federal Regulations, by amending Part 512 as set forth below.

■ 1. The authority for Part 512—Confidential Business Information continues to read as follows:

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

■ 2. Section 512.6 is amended by removing paragraph (b)(3) and adding a new paragraph (c) to read as follows:

§ 512.6 How should I prepare documents when submitting a claim for confidentiality?

* * * * *

(c) Submissions in electronic format—

(1) Persons submitting information under this Part may submit the information in an electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information submitted in an electronic format shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (e.g., the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the words "CONFIDENTIAL BUSINESS INFORMATION".

(2) Confidential portions of electronic files submitted in other than their original format must be marked "Confidential Business Information" or "Entire Page Confidential Business Information" at the top of each page. If only a portion of a page is claimed to be confidential, that portion shall be designated by brackets. Files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify confidential information by alternative markings using existing attributes within the file or means that are accessible through use of the file's associated program. When alternative markings are used, such as font changes or symbols, the submitter must use one method consistently for electronic files of the same type within the same submission. The method used for such markings must be described in the request for confidentiality. Files and materials that cannot be marked internally, such as video clips or executable files or files provided in a format specifically requested by the agency, shall be renamed prior to submission so the words "Confidential Bus Info" appears in the file name or, if that is not practicable, the characters "Conf Bus Info" or "Conf" appear. In all cases, a submitter shall provide an electronic copy of its request for confidential treatment on any medium containing confidential information, except where impracticable.

(3) Confidential portions of electronic files submitted in other than their original format must be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format must, if practicable, be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify the portions of the file that are claimed to be confidential through the use of existing indices or placeholders embedded within the file. If such indices or placeholders exist, the submitter's request for confidential treatment shall clearly identify them and the means for locating them within the file. If files submitted in their original format cannot be marked with page or sequence number designations and do not contain existing indices or placeholders for locating confidential information, then the portions of the files that are claimed to be confidential shall be described by other means in the

request for confidential treatment. In all cases, submitters shall provide an electronic copy of their request for confidential treatment on any media containing confidential data except where impracticable.

(4) Electronic media may be submitted only in commonly available and used formats.

■ 3. Section 512.7 is revised to read as follows:

§ 512.7 Where should I send the information for which I am requesting confidentiality?

A claim for confidential treatment must be submitted in accordance with the provisions of this regulation to the Chief Counsel of the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building W41–227, Washington, DC 20590.

■ 4. Appendix C to Part 512 is revised read as follows:

Appendix C to Part 512—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, Subpart C, if released, is likely to cause substantial harm to the competitive position of the manufacturer submitting the information and is likely to impair the government's ability to obtain necessary information in the future:

(1) Reports and data relating to warranty claim information and warranty adjustment information for manufacturers of tires;

(2) Reports and data relating to field reports, including dealer reports, product evaluation reports, and hard copies of field reports; and

(3) Reports and data relating to consumer complaints.

(b) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, Subpart C, if released, is likely to cause substantial harm to the competitive position of the manufacturer submitting the information:

(1) Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR 579.4(c); and

(2) Lists of common green tire identifiers.

■ 5. Appendix D to part 512 is redesignated as Appendix E to Part 512 and a new Appendix D to Part 512 is added to read as follows:

Appendix D to Part 512—Vehicle Identification Number Information

The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the early warning information requirements of 49 CFR part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

■ 6. Newly redesignated Appendix E to Part 512 is revised to read as follows:

Appendix E to Part 512—OMB Clearance

The OMB clearance number for this part 512 is 2127–0025

Issued on: October 10, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7–20368 Filed 10–18–07; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Friday,
October 19, 2007

Part V

The President

Notice of October 18, 2007—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Federal Register
Vol. 72, No. 202
Friday, October 19, 2007

Presidential Documents

Title 3—

The President

Notice of October 18, 2007

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

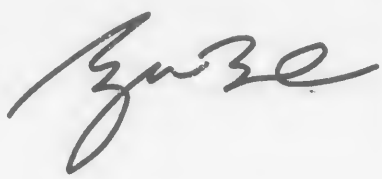
On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property that are in the United States, or within the possession or control of United States persons, of foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order. In addition, the order blocks all property and interests in property of persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order.

The order also prohibits any transaction or dealing by United States persons or within the United States in property or interests in property of the persons designated in or pursuant to the order.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2007.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 18, 2007.

[FR Doc. 07–5222
Filed 10–18–07; 12:42 pm]
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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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S. 474/P.L. 110–95

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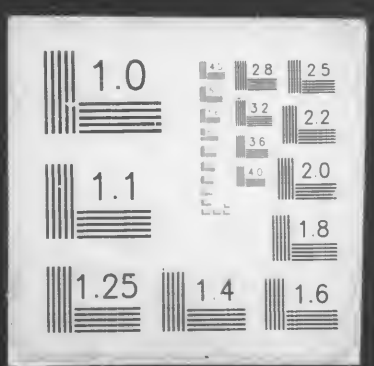
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